

1 ALAN HARRIS, Bar No. 146079
2 PRIYA MOHAN, Bar No. 228984
3 HARRIS & RUBLE
4 655 N. Central Avenue, 17th Floor
5 Glendale, CA 91203
6 Telephone: 323.962.3777
7 Fax No.: 323.962.3004
8 dalanharris@gmail.com
9 pmohan@harrisandruble.com

6 David Harris (SBN 215224)
7 NORTH BAY LAW GROUP
8 116 E. Blithedale Ave., Ste. 2
9 Mill Valley, CA 94941
10 Telephone: (415) 388-8788
11 Facsimile: (415) 388-8770
12 dsh@northbaylawgroup.com

10 Attorneys for Plaintiffs

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

14 TANIKA TURLEY and CHRISTOPHER
15 THOMPSON, individually and on behalf of all
16 others similarly situated,

16 Plaintiff,

17 v.

18 CHIPOTLE SERVICES, LLC, a Colorado business
19 entity, and DOE ONE through and including DOE
20 ONE-HUNDRED,

20 Defendants.

Case No. CGC-15-544936

ASSIGNED TO HON. ANNE-CHRISTINE
MASSULLO, DEPT. 304

**DECLARATION OF ALAN HARRIS
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
REQUEST FOR JUDICIAL NOTICE**

Date: September 23, 2020

Time: 1:30 p.m.

Judge: Hon. Anne-Christine Massullo

Dept.: 304

Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

Complaints Filed: March 25, 2015

FAC Filed: July 23, 2015

Class Cert. Granted: Nov. 2, 2018

SAC Filed: January 15, 2020

TAC Filed: June 11, 2020

Trial date: March 29, 2021

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

09/04/2020
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

1 ALAN HARRIS declares under penalty of perjury under the laws of the State of California and the
2 United States as follows:

3 1. I am a member in good standing of the State Bar of California and am one of the
4 attorneys for Plaintiff Tanika Turley (“Turley” or “Plaintiff”) in the within action. I make this
5 Declaration on behalf of Plaintiff and in support of Plaintiff’s Motion for Preliminary Approval of this
6 proposed Amended Class-Action and PAGA Settlement with Chipotle Services, LLC (“Chipotle”) (the
7 “Settlement”), a true and correct copy of which is attached hereto as **Exhibit 1.**¹ A true and correct copy
8 of the Amended Notice Package is attached hereto as **Exhibit 2.** If sworn as a witness, I could
9 competently testify to each and every fact set forth herein from my own personal knowledge.

10 2. **Proof of Service to LWDA:**

11 On or about September 4, 2020, the proposed amended settlement in this case was uploaded to
12 the website for the California Labor Workforce Development Agency (“LWDA”) pursuant to Labor
13 Code § 2699(1). A true and correct copy of the emailed acknowledgement of receipt from the LWDA is
14 attached hereto as **Exhibit 3.**

15 3. **Maximum Potential Verdict Value (“MPVV”) of the Claims the Class is Releasing**

16 The analysis of the maximum potential verdict value of the released claims for each proposed
17 class is presented below in table form, followed by a detailed analysis.

18 **Summary and Analysis of Class MPVV**

19 **TOTAL MPVV for ENTIRE CLASS** (6,901 Class Members):

20 The MPVV for the Class (before PAGA) is \$8,351,000.

21 The MPVV for PAGA is \$637,700.

22 The Total MPVV for the Class plus PAGA is \$8,988,700.

23 3(a) **Class Release:**

24 Once the settlement is finalized, all Class Members who have not submitted timely and
25 valid Exclusion Letters will release and discharge Defendant, their past or present
26 officers, directors, shareholders, employees, agents, principals, heirs, representatives,
27 accountants, auditors, consultants, insurers and reinsurers, and their respective successors
28 and predecessors in interest, subsidiaries, affiliates, parents and attorneys (the “Released

¹ The Settlement and Notice Package was revised pursuant to the Court’s March 16, 2020, Order Denying Plaintiff’s Motion for Preliminary Approval without prejudice, and further adjusted based upon the amended settlement terms.

1 Parties”) from all claims, demands, rights, liabilities and causes of action that were or
2 could have been asserted (whether in tort, contract or otherwise) for violation of the
3 California Labor Code, the California Business and Professions Code, the applicable
4 Industrial Welfare Commission Orders or any similar state or federal law, whether for
5 economic damages, non-economic damages, liquidated damages, punitive damages,
6 restitution, penalties, other monies, or other relief based on any facts, transactions, events,
7 policies, occurrences, acts, disclosures, statements, omissions or failures to act pled or
8 arising out of or reasonably related to the facts, transactions, and occurrences pled in the
9 Complaint, the First Amended Complaint, Second Amended Complaint or Third
10 Amended Complaint, which are or could be the basis of claims for: (1) unpaid wages; (2)
11 unpaid minimum wages; (3) unpaid or underpaid overtime wages; (4) failure to provide
12 meal periods and claims regarding meal period premium pay; (5) failure to provide rest
13 periods and claims regarding rest period premium pay; (6) failure to reimburse expenses;
14 (7) failure to provide accurate wage statements; (8) failure to timely pay wages upon
15 termination and during employment; (9) claims for unfair competition arising from the
16 facts alleged in the operative complaints; and (10) related claims for penalties pursuant to
17 the Labor Code Private Attorneys General Act of 2004 (“PAGA) for California Labor
18 Code sections 201, 202, and 203 (collectively, the “Released Claims”). The release will
19 exclude claims for vested benefits, wrongful termination (apart from that of Plaintiff
20 Turley and any other named Plaintiff who will execute general releases of claims under
21 Civil Code section 1542), unemployment insurance, disability, workers’ compensation,
22 and claims outside of the Class Period.²

23 Harris Decl. Ex. 1, ¶ X(A)(62-63)(hereinafter, the “Released Claims”).

24 4. **Maximum Potential Verdict Value (“MPVV”) of All Released Claims**

25 The following table summarizes the **Maximum Potential Verdict Value** (“MPVV”) of the Released
26 Claims (before attorney fees & costs) for the entire Class, which consists of approximately 6,901 unique
27 individuals. The MPVV assumes all classes are certified and all claims are proven, including the aspect of all
28 claims that require willfulness, without offset. The analysis related to these calculations follow the table.

It should be noted at this juncture that given the strength of Chipotle’s defenses to the merits of the claims,
the difficulty of proving “wilfulness” with relation to labor code violations, the uncertainty concerning the
stacking of PAGA penalties, and the discretionary nature of PAGA penalties, Plaintiff believe it is unlikely to
recover maximum theoretical penalties.

² The parties have removed releases for PAGA under the Wage Order and UCL. The PAGA release only covers continuing wages. See Kim v. Reins International California, Inc., 9 Cal.5th 73, 89 (2020) (“[T]here is no right of action under PAGA to enforce an IWC wage order.”) (citing Thurman v. Bayshore Transit Management, Inc., 203 Cal. App. 4th 1112, 1132 (2012) (disapproved on other grounds in ZB, N.A. v. Sup. Ct., 8 Cal.5th 175 2019)). As recognized by the California Supreme Court, a Wage Order can only be enforced through PAGA to the extent a corresponding Labor Code provision provides for its enforcement and that provision and facts and theories giving rise to the claim are identified in the PAGA Notice. Kim, 9 Cal. 5th at 89; Thurman 203 Cal.App.4th at 1132; Brown, 28 Cal.App.5th at 839; Lab. Code § 2699.3(b)(1).

Table 1: Total Maximum Verdict Value for Class & Subclasses	
Released Claim	MPVV
(1) Unpaid Wages	\$ 74,328 (Min. Wage) \$106,740.50 (Overtime) <u>\$ 45,267 (Interest)</u> \$226,335
(2) Unpaid Minimum Wages	\$74,328
(3) Unpaid or Underpaid Overtime Wages	\$106,740
(4) Failure to Provide Meal Periods and Claims Regarding Meal Period Premium Pay	\$182,984
(5) Failure to Provide Rest Periods and Claims Regarding Rest Period Premium Pay	\$203,315
(6) Failure to Reimburse Expenses	\$12,891 (Expenses) <u>\$ 3,223 (Interest)</u> \$ 16,114
(7) Failure to Provide Accurate Wage Statements	\$6,998,200
(8) Failure to Timely Pay Wages Upon Termination and During Employment	\$655,776
(9) Claims for Unfair Competition Arising from the Facts Alleged in the Operative Complaints	\$ 68,276
(10) Related Claims for Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA) for California Labor Code sections 201, 202, and 203	\$637,700
MPVV – Pre PAGA	\$8,351,000³
MPVV – PAGA Only (Estimated Violations – 25%)	\$158,400
MPVV – PAGA Only (100% Violations)	\$637,700
Total MPVV – Including PAGA (100% PAGA violations)	\$ 8,988,700

5. ANALYSIS

The MPVV is being assessed based upon the following information provided by Chipotle:

There are an estimated 6,901 Class Members who have worked approximately 73,665 pay periods during the Class Period.

³ The total does not double count the MPVV for Overtime and Minimum Wage from (1), (2) & (3).

1 Of the Class Members, there are 6,901 Class Members, of which 6,337 are former employees.

2 **5(a). Unpaid Wages**

3 Plaintiffs have alleged that Chipotle did not pay minimum and overtime pay for all hours worked. This
4 alleged failure to pay all wages owed to class members during each pay period would violate Labor Code section
5 204. CA Labor Code § 1194 provides that: (a) Notwithstanding any agreement to work for a lesser wage, any
6 employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the
7 employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or
8 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

9 Therefore, based upon the alleged unpaid minimum wages and overtime wages, Chipotle’s MPVV
10 would be \$226,335. This calculated amount would be the sum total of the sum total of the unpaid minimum
11 wages and overtime wages calculated below:

12 **\$181,068** = \$74,328 [total unpaid minimum wage] + \$106,740 [total unpaid overtime]

13 The interest on the alleged unpaid wages would be **\$181,068**, calculated as follows:

14 **\$45,267** = \$181,068 * .1 [interest rate] * 2.5 [average number of years for unpaid interest on wages].

15 **5(b). Unpaid Minimum Wages**

16 Plaintiffs allege that Chipotle maintained a de facto policy of not paying class members for all time
17 worked. Specifically, Plaintiffs allege that Chipotle understaffed its restaurants so as to keep its labor costs to a
18 minimum. This, in turn, created a working environment where crew members felt pressure to work off-the-
19 clock—such as before and after their shifts and during their meal periods—to complete the duties. At most, these
20 off-the-clock hours would typically not exceed the length of the meal period i.e. 30 minutes.

21 California law defines “hours worked” as “the time during which an employee is subject to the control of
22 an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to
23 do so.” Morillion v. Royal Packing Co., 22 Cal.4th 575, 578 (2000).⁴ Thus, “an employee who is subject to an
24 employer’s control does not have to be working during that time to be compensated.” *Id.*; see also Cal. Code
25 Regs. tit. 8, § 11050 (defining “hours worked” as the “time during which an employee is subject to the control of
26 an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to
27

28 ⁴ Arredondo v. Delano Farms Co., 1:09-cv-01247 MJS, 2014 U.S. Dist. LEXIS 22658, at *89-*91 (E.D. Cal. Feb. 21, 2014) (quoting Morillion, 22 Cal. 4th at 578).

1 do so.”). An employer is liable for off-the-clock “hours worked” if it “knew or should have known off-the-clock
2 work was occurring.” Brinker Restaurant Corporation v. Super. Ct., 53 Cal. 4th 1004, 1051-52 (2012).

3 Based upon expert examination, interviews with class members and payroll analysis, assuming that off-
4 the-clock violations occurred at most during 20% of all pay periods, Chipotle’s MPVV would be **\$74,328**:

- 5 • $73,665$ (total pay periods) * $.20$ * $\$10.09$ [average minimum wage from 2015-2020]⁵ * 0.5 [estimated
6 maximum off-the-clock hours per violation] = $\$74,328$ MPVV for Minimum Wage.

7 **5(c). Unpaid or Underpaid Overtime Wages**

8 Labor Code section 510 requires an employer to compensate employees who work more than 8 hours in
9 one workday, or 40 hours in one workweek, with no less than 1½ times the “regular rate” of pay. Labor Code
10 section 510.

11 Plaintiffs’ analysis of a sample of time and payroll records revealed that Class Members worked overtime
12 shifts during approximately 35% of all pay periods. Assuming a violation rate of 20% for all qualifying pay
13 periods⁶ ($35\% \times 20\% = 7.00\%$), and utilizing an overtime rate of $\$20.70$ ⁷, then Chipotle’s MPVV for overtime
14 would be **\$106,740.50**:

- 15 • $73,665$ (total pay periods) * $.07$ * $\$20.70$ [rate] * 1.00 [estimated maximum overtime hours] =
16 $\$106,740.50$ MPVV for Overtime.

17 **5(d). Failure to Provide Meal Periods and Claims Regarding Meal Period Premium Pay**

18 Due to Chipotle’s alleged practice of understaffing its California restaurants, Plaintiff alleged that crew
19 members were forced to work off-the-clock during their meal periods, or to take them late, so as to complete all of
20 their assigned duties (e.g. work through a ‘lunch rush’). Labor Code section 512 requires employers to provide
21 employees with 30-minute uninterrupted and duty-free meal period within the first 5-hours of work. Under Labor
22

23 ⁵ The average minimum wage during the Class Period would be calculated using the following
24 minimum wages: $\$8$ (2015) + $\$9$ (2016) + $\$10$ (2017) + $\$11$ (2018) + $\$12$ (2019) + $\$13$ (2020). The total
25 was added together and divided by the number of years, with the exception 2020’s rate, which was given
26 a weight of only 1/6 due to the fact that 2020 only contained 2 months of pay periods during the Class
27 Period. $(8 + 9 + 10 + 11 + 12 + 13/6 [2.17]) / 5.17 = \10.09 . Considering that over 90% of the Class
28 Members are no longer working, the minimum wage recovered for most of the Class Members would
likely be lower than $\$10.09$, however, this calculation assumes the maximum potential value.

⁶ Based upon interviews with class members and payroll analysis, the alleged overtime violations
were manager or store specific, so 20% would be a high estimate.

⁷ Plaintiffs’ expert BCG determined that the average hourly rates for crew members during the pay
periods analyzed was $\$13.80$. Therefore, the overtime rate would be $\$13.80 * 1.5 = \20.70 .

1 Code section 512, if an employer maintains a uniform policy that does not authorize and permit the amount of
2 meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and
3 is liable.”

4 Based on his review of a sample of time and payroll records, Plaintiffs’ expert determined that at most
5 approximately 60% of pay periods had a shift worked more than 5 hours without a 1st meal break. Based upon
6 analysis of the records, Plaintiffs estimated the violation rate at 30%, accounting for changes in policy following
7 filing of the lawsuits, meal period waivers and cases where Chipotle had already paid meal period premiums.
8 Therefore, Chipotle’s maximum potential exposure for meal period violations would be **\$182,984:**

- 9 • 73,665 (total pay periods) * .6 [shifts worked more than 5 hours without a 1st meal break] * \$13.80
10 [hourly rate] * .3 [estimated violation rate] = \$182,984

11 **5(e). *Failure to Provide Rest Periods and Claims Regarding Rest Period Premium Pay***

12 Like their meal period claim, Plaintiffs allege that Chipotle’s rest period policies and practices—and
13 specifically its practice of understaffing its California restaurants—discouraged Class Members from taking
14 lawful rest periods by pressuring them to regularly work during their rest periods, or to forgo them entirely. Labor
15 Code section 226.7 provides “an employer shall not require an employee to work during a meal or rest or
16 recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
17 Industrial Welfare Commission (“IWC”).” Under IWC Wage Order 5-2001 an employer must authorize and
18 permit all employees to take 10-minute duty free rest periods for every major fraction of 4-hours worked. *See*
19 Augustus v. ABM Security Services, Inc., 2 Cal. 5th 257, 269 (2016) (concluding that “during rest periods
20 employers must relieve employees of all duties and relinquish control over how employees spend their time.”).

21 Based upon analysis of the records, interviews with Class Members, and expert analysis, Plaintiff
22 estimated the total alleged violation rate throughout the Class Period to be no higher than 20%, accounting for
23 changes in break policy following filing of the lawsuit. Therefore, Chipotle’s maximum potential exposure for
24 rest period violations would be \$203,315:

- 25 • 73,665 (total pay periods) * \$13.80 [hourly rate] * .2 [estimated violation rate] = \$203,315

26 **5(f). *Failure to Reimburse Expenses***

27 Plaintiffs allege that Chipotle required Class Members to download an application named “Workday” on
28 their personal electronic devices, which was required to access their itemized wage statements. Chipotle also

1 required Aggrieved Employees to use Workday to receive and review timesheet reminder emails that they were
2 required to check within the normal course of their duties, and to submit time entries for payroll processing.
3 Despite being regularly required to use their personal electronic devices to access and utilize Workday, Plaintiff
4 alleges that Chipotle did not reimburse Aggrieved Employees for the use of their personal electronic devices.
5 Plaintiffs allege that this practice violates Labor Code section 2802.

6 Labor Code section 2802 provides that “[a]n employer shall indemnify his or her employee for all
7 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
8 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at
9 the time of obeying the directions, believed them to be unlawful.” See Cochran v. Schwan’s Home Serv., Inc.,
10 228 Cal. App. 4th 113 (2014) (“We hold that when employees must use their personal cell phones for work-
11 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell
12 phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of
13 their cell phone bills.”).

14 Utilizing an estimated average monthly cell phone bill of \$50⁸ and estimated average usage of fifteen
15 minutes per shift to check timesheet reminder emails, submit time entries for payroll processing, plus fifteen
16 minutes to check each pay statement⁹, then the total MPVV of this claim would be **\$16,114** (= \$12,891 [damages]
17 + 3,223 [interest]).

18
$$73,665 \text{ (pay periods)} * \$0.175 \text{ (reimbursement per pay period)} = \$12,891.$$

19 The above calculation assumes that 100% of all Class Members actually downloaded the Workday app,
20 and also assuming that those employees should have been reimbursed every other pay period based on a monthly
21

22 _____
23 ⁸ <https://www.tomsguide.com/best-picks/best-cell-phone-plans> (accessed August 23, 2020) A 2020
24 survey lists the monthly plans available for Verizon - Prepaid (\$45/month); Verizon – 5GB (\$55/month);
T-Mobile – Regular (\$60-70); Republic (\$30); Metro (\$50); T-Mobile Connect (\$15).

25 ⁹ Based on interviews with class members, Counsel has determined that if the average crew member
26 worked four days per week, then they utilized the app approximately one hour per week, or four hours
27 per month (4 [shifts per week] * 15 [minutes per check in] * 4 [weeks per month]). An additional 30
28 minutes is allocated to checking bi-monthly paystubs. Therefore, the total time utilizing the app would
be approximately **5 hours per month**. There are 730 hours in a month. Therefore, for an average cell
phone bill of \$50, the billing allocation would be approximately \$0.07 per hour. (= \$50 / 730) Therefore,
the total time utilizing the app per month as a percentage of total cell phone bill would be \$0.35 (= 5
[hours per month] * \$0.07 [cost per hour]). As there are two pay periods per month, then the cost per
period would be \$0.175 (= \$0.35/2).

1 billing cycle for their cellular data plans.¹⁰

2 Section 2802 also calls for interest at a rate of 10% from “the date on which the employee incurred the
3 necessary expenditure or loss.” Labor Code Section 2802(b). Therefore, the amount of interest due would be
4 **\$3,223**, calculated as $(\$12,891 * .1 \text{ [interest rate]} * 2.5 \text{ [average number of years for unpaid interest]})$.

5 **5(g). Failure to Provide Accurate Wage Statements**

6 Plaintiffs allege that Chipotle failed to provide accurate itemized wage statements in accordance with
7 Labor Code section 226(a)(1), (2), and (5). Labor Code section 226 obligates employers, semi-monthly or at the
8 time of each payment to furnish an itemized wage statement in writing showing, inter alia, “(1) gross wages
9 earned, (2) total hours worked by the employee . . . [and] (5) net wages earned.” Section 226 of the California
10 Labor Code (Failure to Provide Information on Pay Stubs) provides for liquidated damages as follows:

11 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
12 employer to comply with subdivision (a) is entitled to recover the greater of all actual
13 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
14 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney’s fees.

15 Labor Code section 226(e).

16 The alleged wage statement violations for the 7,000 members of the Pre-August 2014 Class have
17 been discussed extensively.¹¹ The alleged failure to list all hours actually worked was addressed with

18 _____
19 ¹⁰ Every class member did not utilize the Workday app, but for the purposes of calculating the
MPVV, it is assumed that 100% of class members utilized the app. In reality, it is estimated that only
about 75% of the class members utilized the app.

20 ¹¹ On November 2, 2018, the Court issued an Order granting, in part, Plaintiffs’ motion for class
21 certification of a wage statement claim under Labor Code § 226 and denying Plaintiffs’ motion with
respect to the final pay, meal period, rest period, and derivative claims. The class was defined as:

22 All California non-exempt workers who received one or more wage statements from CS
23 during the period from October 2, 2014 to around April 1, 2015, the date on which CS
wage statements were changed in response to Turley’s case.

24 Class Cert. Order (“Class Certification Order”), p. 23:20-23. The Court stated that “[t]he wage statement
25 subclass, narrowed to individuals who did not sign arbitration agreements is certified. The parties must
confer on the precise wording of the class definition, and should consider whether it includes (i)
26 individuals hired before August 1, 2014 or October 2, 2014 and (ii) whether it ends March 30, 2015 or
some other date, e.g., in April 2015.” *Id.* Plaintiffs alleged that Defendants did not provide a wage
27 statement showing the items required under Code section 226(a)(2)(“Every employer shall. . .furnish . . .
an itemized statement . . . showing (2) the total hours worked by the employee.”) The Court found that
28 Turley was an adequate class representative for the Certified Pre-August 2014. The Certified Pre-
August 2014 contains approximately 7,000 class members who are all current and former non-exempt
employees of Defendant, hired *before* August 1, 2014 and who worked in California at any time during
the Class Period. Class Cert. Order, pp. 20-23. *Id.*

1 new wage statements beginning on or about April 1, 2015, so the potential MPVV for each subclass will
2 be calculated separately.

3 The total number of alleged wage statements for the Class is 73,665. Here, Class Members are
4 entitled to liquidated damages when not provided the data, \$50 for the initial wage statement, \$100 for
5 later statements. The total damages would be **\$6,998,200** (=7,366 * \$50 [first violation=\$368,300] +
6 \$6,629,900 * \$100 [later violations=66,299]).¹² (This would assume that none of the employees would
7 reach the total aggregate penalty of \$4,000, which would reduce the overall MPVV).

8 Chipotle changed their wage statements on or about April 1, 2015, to address the alleged
9 violations. Actions for violations of Labor Code’s meal break provisions do not entitle employees to
10 pursue the derivative waiting time and itemized wage statement penalties. Cal. Lab. Code §§
11 203, 226, 226.7; Naranjo v. Spectrum Sec. Servs., Inc., 40 Cal. App. 5th 444, 463, 253 Cal. Rptr. 3d
12 248, 262 (Ct. App. 2019), as modified on denial of reh'g (Oct. 10, 2019).

13 ***5 (h). Failure to Timely Pay Wages Upon Termination and During Employment***

14 An employer must provide an employee with wages owed at the time of discharge or within 72
15 hours of their resignation. *See* Labor Code §§ 201-202. Labor Code section 203 provides “[i]f an
16 employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages
17 of the employee shall continue as a penalty [for up to 30 days.]” Mamika v. Barca, 68 Cal. App. 4th 487,
18 492 (1998). However, unreimbursed expenses and derivative meal and rest period premiums are not to
19 be utilized for the calculation.¹³ Naranjo v. Spectrum Sec. Servs., Inc., 40 Cal. App. 5th 444, 452 (Ct.
20 App. 2019), as modified on denial of reh'g (Oct. 10, 2019)

21 _____
22 ¹² The MPVV for wage statements is lower in this calculation than in the calculation presented in the
23 previous Motion for Preliminary Approval because the prior calculation was based upon an *estimate* of
24 wage statements presented at the mediation (98,904), which was higher than the actual number of wage
25 statements finally determined by Chipotle (73,665).

26 ¹³ “The Court follows the reasoning of the multiple courts that have held employees cannot recover
27 waiting time penalties for expense reimbursements and meal and rest period premiums. *See, e.g., Nelson*
28 *v. Dollar Tree Stores, Inc.*, No. CV 2:11-01334 JAM, 2011 WL 3568498, at *5 (E.D. Cal. Aug. 15,
2011) (concluding “that the mileage expenses relating to the use of Plaintiff’s personal vehicles are not
wages under Cal. Lab. Code Section 200 and are thus ineligible for penalties under Section
203.”); Naranjo v. Spectrum Sec. Servs., Inc., 40 Cal. App. 5th 444, 253 Cal. Rptr. 3d 248 (2019), *as*
modified on denial of reh'g (Oct. 10, 2019) (relying on the plain language of the statute, the court held
that an employer’s failure to pay meal and rest period premiums “**does not trigger section**
203’s derivative penalty provisions for untimely wage payments.”). Consequently, waiting time
penalties are not available to Plaintiffs for meal and rest period premiums and expense reimbursements.

1 Of the 6,901 Class Members, there are 6,337 former employees. Based upon counsel's
2 interviews with class members, review of deposition transcripts, analysis of thousands of pages of
3 payroll records produced during formal discovery, and expert review of data provided pursuant to
4 mediation (which was reviewed by Plaintiffs' experts), counsel estimates that a maximum of 25% of
5 terminated class members (1,584) could have received paychecks outside the statutory time limit
6 provided in Labor Code §§ 201-202 i.e. at the time of discharge or within 72 hours of their resignation.
7 When a class member received a final paycheck outside the time limit, the check was typically received
8 5-7 days following the last day of employment (or 6 days on average). Taking into account that the
9 company has an additional 72 hours to provide paychecks to those who resign without notice, then on
10 average, a class member who allegedly received a late check in this case would receive it approximately
11 3.75 days late.

12 Plaintiff's expert, moreover, reviewed data from over 11,300 pay periods during the Class Period
13 and determined that the weighted average straight-time pay for the crew members was **\$13.80**.
14 Therefore, the average day rate would be **\$110.40** ($=\$13.80 * 8$).

15 Assuming that every allegedly late paycheck was proven to be "willful" under Labor Code
16 section 203, then the average class member would be due continuing wages of \$414 ($\$414 = \$110.40 * 3.75$).
17 Therefore, the MPVV for continuing wages for the entire Class would be **\$655,776** ($=1,584 * \110.40
18 $[\text{average daily rate}] * 3.75 [\text{days late}]$).

19 **5(i). *Claims for Unfair Competition Arising from the Facts Alleged in the Operative***
20 ***Complaints***

21 Plaintiff contends that Chipotle's unlawful business practices, as described above, entitle Plaintiff
22 and putative class members to seek the remedies available under *California Business and Professions*
23 *Code §17200 et seq.* (UCL). The UCL provides for injunctive relief and restitution. Here,
24 compensatory damages are not available under the UCL. However, a court may provide Plaintiff with
25 restitution in the form of backpay and interest that was unlawfully withheld from an employee's wages.

27 Mejia v. Illinois Tool Works Inc., No. CV-18-09969-MWF(JCX), 2019 WL 8135433, at *12 (C.D. Cal.
28 Dec. 12, 2019)

1 Cortez v. Purolator Air Filtration Prods. Co., 23 Cal. 4th 163, 179 (2000). There are no allegations that
2 “backpay” has been withheld, however, the Class could arguably receive interest on unpaid continuing
3 wages.

4 The interest for the unpaid wages upon termination would be **\$674**, calculated as follows:

5 **\$65,578** (interest per year) [(\$110.40 [average unpaid wages] * 1,584 [est. # with late payment])
6 / **.1 (interest rate)**]¹⁴

7 The daily rate of interest would be \$179 (= \$65,578 [interest per year] / 365 [days])

8 Therefore, the total interest due would be **\$674** (= \$179 [daily interest] * 3.75 [average days
9 late]).

10 Further, the Class could arguably receive interest on unpaid meal and rest period premiums. *See*
11 Naranjo v. Spectrum Sec. Servs., Inc., 40 Cal. App. 5th 444, 452 (Ct. App. 2019), as modified on denial
12 of reh'g (Oct. 10, 2019)¹⁵. The interest for the interest on unpaid meal and rest period premiums would
13 be **\$67,602**, calculated as follows:

14 \$386,299 [total MPVV for meal and rest premiums] * .07 [interest rate] = \$27,041 interest per
15 year * 2.5 [average years] = \$67,602 interest.

16 **5(j). Related claims for penalties pursuant to the Labor Code Private Attorneys General Act**
17 **of 2004 (“PAGA”) for California Labor Code sections 201, 202, and 203; Wage Order 5 of the**
18 **Industrial Welfare Commission; and section 17200 of the California Business & Professions Code**
19 **(collectively, the “Released Claims”).**

20 Unless otherwise provided by the Labor Code, PAGA civil penalties are calculated according to Labor
21 Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil
22 penalty is \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved
23 employee per pay period for each subsequent violation (the “subsequent violation penalty”).

24
25 ¹⁴ Lab. Code §§ 218.6; Civil Code § 3289.

26 ¹⁵ Unpaid premium wages for violations of Labor Code's meal break provisions accrue prejudgment
27 interest at 7% pursuant to Civil Code's default interest rate for litigants entitled to recover damages,
28 rather than at 10% pursuant to Labor Code's interest rate for actions brought for the nonpayment of
wages. Cal. Civ. Code § 3287; Cal. Lab. Code §§ 218.6, 226.7. Naranjo, 40 Cal. App. 5th at 452. An
employee's right to wages accrues at the time work is performed, but the right to a penalty does not vest
until someone has taken action to enforce it. Cal. Lab. Code §§ 203, 226. Id.

1 **The PAGA release is limited to “California Labor Code sections 201, 202, and 203¹⁶.”** The civil
2 penalties for these violations would be limited to the members of the Class who are former employees who did
3 not receive timely final paychecks. Considering that there are only 6,337 former employees who are members of
4 the Class, the total potential PAGA damages would be calculated as follows:

5 With estimated violations, Labor Code Sections 201-203 Violations, the total MPVV would be:
6 **\$158,400** = 1,584 [Pay Periods] * \$100 [PAGA Penalty]¹⁷

7 For purposes of the MPVV, assuming that every one of the final paychecks for all former employees
8 (6,337) resulted in a 100 percent violation rate—an unlikely scenario—the total possible MPVV would **\$637,700**
9 = 6,377 [Pay Periods] * \$100 [PAGA Penalty]. The amount of **\$637,700** is the total possible civil penalties
10 under the PAGA that could recovered considering that there are only 6,337 former employees. This scenario
11 would only occur if each and every former employee received a late final paycheck, each of Plaintiff’s allegations
12 are proven at trial, the Court awards maximum penalties for the alleged PAGA violations, and the Court’s
13 judgment is affirmed on appeal. In other words, this estimate assumes complete and total victory without offset.
14 Therefore, for purposes of evaluating the settlement’s reasonableness, this estimate must be “tempered by factors
15 such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
16 measured in years).” In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.,
17 295 F.R.D. 438, 453 (C.D. Cal. 2014). This balanced analysis is discussed in detail below.

18 The total MPVV for the Class is less in this case than in the previous motion due to the fact that (1) the
19 release here is more restricted, removing the release of the Wage Order and UCL PAGA claims; (2) the number
20 of pay periods (73,665) has been determined to be less than the original estimate presented at mediation (98,904);
21 (3) the actual number of potential class members has been determined to be 6,901 rather than the estimated
22 number presented at mediation (7,608), and the class excludes any Class Member who previously opted into the
23 *Turner* collective action or filed an arbitration or filed a lawsuit; (4) the parties are able to more accurately
24 determine the MPVV because more discovery was done with regard to the proposed Class; (5) corrections of
25 certain mathematical errors in the calculations made in the previous motion.

26
27 ¹⁶ PAGA violations for Wage Order 5 of the Industrial Welfare Commission and section 17200 of
the California Business & Professions Code are not being released.

28 ¹⁷ Of course, a terminated or resigned employee would only receive one final paycheck.

1 **6. The Settlement Represents a Fair Compromise of Plaintiffs' Claims in View of the**
2 **Risks of Continued Litigation and the Hotly Contested Issues of Law And Fact**

3 Based upon guidance from this Court, the mediator, and the MSC, the parties have now
4 abandoned the proposed class settlement for 74,000 class members who signed arbitration agreements,
5 and propose to limit the settlement to the approximate 7,000-member Certified Wage Statement Class.
6 In order to make the settlement even more beneficial to Class Members, the parties have further revised
7 their settlement as follows:

- 8 1. **Reduced attorney fees:** Plaintiff's attorneys have reduced their requested fees to
9 33.33% from 35%. The reduction from 35% (\$612,500) to 33.33% (\$583,333) for the
10 new proposed settlement will put an additional \$29,167 into the hands of the Class.
- 11 2. **Reduced Administration Costs:** The estimated claims administration costs have been
12 reduced from \$231,000 to \$50,000, which will put additional settlement funds into the
13 hands of the Class Members.
- 14 3. **Increased LWDA Penalty Payment:** The parties have increased the net payment to the
15 State of California (LWDA) for Civil Penalties from \$10,000 to \$50,000.
- 16 4. **Narrowed PAGA release:** The parties have narrowed the PAGA release to only include
17 Labor Code section 201-203 violations, specifically removing allegations of violations of
18 the Wage Order and Labor Code 17200 of the Cal. Bus. & Professions Code ("UCL")
19 from the settlement, as those claims are not viable in any case.¹⁸

20 **Importantly, even with the increased payment to the LWDA, the above adjustments will**
21 **increase the average net payment to each Class Member by approximately 11%, from \$135 to \$150**
22 **per person.** With the average MPVV per Class Member at \$1,302 (\$8,988,700 / 6,901), then the average
23 net recovery for each class member (**even with 100% proven PAGA violation rate, a highly unlikely**
24 **scenario**), would equal **11.5% of the potential MPVV**. With the total PAGA penalties of \$66,667 (net
25 paid to LWDA of \$50,000), then the PAGA penalties will equal to 42% of the likely PAGA penalties
26 (0.42 = \$66,667 / \$158,400) and approximately 8% of the total possible PAGA penalties (0.08 = \$66,667
27 / \$633,700). It is clear, however, that the alleged violation rate would not even be in the ballpark of
28 100%, and based upon the lack of certification of the continuing wages class by the Court and Chipotle's
accompanying 350 declarations, the 20% figure utilized by Plaintiff's as an estimate should be a good

¹⁸ See Kim v. Reins International California, Inc., 9 Cal.5th 73, 89 (2020) ("[T]here is no right of action under PAGA to enforce an IWC wage order.") (citing Thurman v. Bayshore Transit Management, Inc., 203 Cal. App. 4th 1112, 1132 (2012) (disapproved on other grounds in ZB, N.A. v. Sup. Ct., 8 Cal.5th 175 2019)). As recognized by the California Supreme Court, a Wage Order can only be enforced through PAGA to the extent a corresponding Labor Code provision provides for its enforcement and that provision and facts and theories giving rise to the claim are identified in the PAGA Notice. Kim, 9 Cal. 5th at 89; Thurman 203 Cal.App.4th at 1132; Brown, 28 Cal.App.5th at 839; Lab. Code § 2699.3(b)(1).

1 yardstick for determining the reasonableness of the Settlement.

2 PAGA provides that “[t]he superior court shall review and approve any settlement of any civil action filed
3 pursuant to this part.” Lab. Code § 2699(l)(2). Other than this general rule, “neither the California legislature, nor
4 the California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has provided any definitive
5 answer to [the] question” of the appropriate standard for approving the settlement of PAGA claims. *See Flores v.*
6 *Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075 (C.D. Cal. 2017).

7 In *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110 (N.D. Cal. 2016), the trial court adopted the
8 standard proposed by the LWDA. *Id.* at 1133. The court stated, “the LWDA rightly has stressed” that “it is ...
9 important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful,
10 consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the
11 court evaluate whether the settlement meets the standards of being fundamentally fair, reasonable, and adequate
12 with reference to the public policies underlying the PAGA.” *Id.* Those public policies include, “augmenting the
13 state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring
14 noncompliance.” *Id.*; *Williams v. Superior Court*, 3 Cal. 5th 531, 546 (2017) (PAGA “sought to remediate present
15 violations and deter future ones”); *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (declared purpose of
16 PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws).

17 In addition to the LWDA’s recommended standard, certain policy considerations should also guide the
18 Court’s analysis of whether the relief provided by the settlement is “genuine and meaningful.” First, a “proposed
19 settlement is not to be [strictly] judged against a hypothetical or speculative measure of what might have been
20 achieved by the negotiators.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688
21 F.2d 615, 625 (9th Cir. 1982). This is because, “[i]t is well-settled law that a cash settlement amounting to only a
22 fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *Id.* at 628.

23 Second, in weighing the strength of a plaintiff’s case against the benefits provided by the settlement,
24 courts are not required to balance the “scales with the nicety of an apothecary.” *See Weiss v. Drew Nat. Corp.*,
25 465 F. Supp. 548, 551 (S.D.N.Y. 1979). Rather, the very object of compromise “is to avoid the determination of
26 sharply contested and dubious issues.” *See In re Prudence Co.*, 98 F.2d 559, 560 (2d Cir. 1938). The court’s
27 analysis generally should not go beyond, “an amalgam of delicate balancing, gross approximations, and rough
28 justice.” *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 743 (2009); *see also In re Microsoft I-V*

1 Cases, 135 Cal. App. 4th 706, 723 (2006).

2 The civil penalties secured by the settlement represent a fair compromise of the claims in view of the risks
3 of continued litigation and the hotly contested issues of law and fact relating to the claims. The settlement
4 accomplishes PAGA’s objectives by imposing sufficient civil penalties “to punish and deter” Chipotle from
5 committing any further violations. Cal. Lab. Code § 2699(e)(2); Iskanian v. CLS Transp. Los Angeles, LLC, 59
6 Cal. 4th 348, 384 (2014). As Chipotle’s counsel stated in open court, the company has made significant changes
7 to its payroll practices in response to the litigation. Although Plaintiffs maintain their strong belief in the
8 underlying merits of their claims, Plaintiffs’ Counsel acknowledge that wage and hour cases on behalf of low
9 wage workers can difficult to prove at trial, and that success at trial is far from certain. For settlement purposes,
10 therefore, Plaintiffs determined a more realistic range¹⁹ of recovery by discounting Chipotle’s maximum potential
11 exposure by the risks and uncertainties of continued litigation, and by the strengths of Chipotle’s many defenses
12 to the merits of Plaintiff’s claims. See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, 186 Cal. App. 4th
13 399, 408, 112 Cal. Rptr. 3d 324, 331 (2010) (“an informed evaluation cannot be made without an understanding
14 of the amount that is in controversy and the realistic range of outcomes of the litigation.”)

15 **6(a). Defenses to Manageability**

16 Chipotle could argued that a trial on a representative basis would be unmanageable and unwieldy, and
17 therefore inappropriate. Manageability was definitely be a hotly-contested issue at class certification, which was a
18 factor in this Court denying class certification on continuing wages, meal and rest breaks. Class Cert. Order,
19 p.8:20-24 (meal periods); 12:2-4 (meal periods); 13: 13:19-20 (rest breaks); 15:9 (final wages). Of course, with a
20 settlement, as here, manageability is not an issue. The Ninth Circuit recently held that the “criteria for class
21 certification are applied differently in litigation classes and settlement classes. In deciding whether to certify a
22 litigation class, a district court must be concerned with manageability at trial. However, such manageability

23 ¹⁹ Federal district courts also recognize that there is an inherent “range of reasonableness” in
24 determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any
25 particular case and the concomitant risks and costs necessarily inherent in taking any litigation to
26 completion.” *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); see also *Nat’l Rural*
27 *Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a
28 proposed settlement may be acceptable even though it amounts to only a fraction of the potential
recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004)
 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant,
consideration when assessing settlement’s fairness”); *Officers for Justice v. Civil Serv. Comm.*, 688 F.
2d 615, 628 (C.A. Cal. 1982) (it is “the complete package, taken as a whole rather than the individual
component parts, that must be examined for overall fairness”).

1 is not a concern in certifying a settlement class where, by definition, there will be no trial.” In re Hyundai & Kia
2 Fuel Econ. Litig., 926 F.3d 539, 556–57 (9th Cir. 2019).

3 **6(c). Defenses to Plaintiffs’ Overtime Claim**

4 Although the DLSE manual states that the value of “meals and lodging” should be factored into the
5 calculation of the regular rate, Chipotle could argue that the DLSE manual both lacks the force of law and relies on
6 outdated case law and federal regulations. Chipotle could also argue that FLSA exempts from the regular rate
7 payments “incurred by an employee in the furtherance of his employer’s interests and properly reimbursable by the
8 employer; and other similar payments to an employee which are not made as compensation for his hours of
9 employment. . . .” 29 U.S.C. § 207(e)(2). As a general rule, expenses that employees incur for their employer’s
10 convenience are not included in an employee’s regular wage rate, so long as the reimbursement reasonably
11 approximates the expenses incurred. 29 C.F.R. § 778.217(a). Chipotle would therefore argue that providing free food
12 and beverages was for its benefit (i.e., so that employees would remain on the worksite during their meal periods).

13 **6(d). Defenses to Plaintiffs’ Minimum Wage Claim**

14 Chipotle provided evidence that that its written labor policies strictly prohibit employees from working
15 off-the-clock, and require employees to accurately record all time worked, including the start and end times of
16 shifts and meal periods:

17 Managers are responsible for ensuring all hourly employees only
18 work when they are clocked in. Working off the clock is not
19 permitted, ever. Work includes meetings and one on one talks with
20 managers. In the event hourly employees work without being
21 clocked in, in violation of our policy, managers are required to
22 ensure our time records are immediately corrected to include all
23 time worked by hourly employees . . .

24 Hourly employees must always work on the clock, not ‘off the
25 clock’. All hourly employees must punch in when they are
26 working. It is your responsibility to make certain all hourly
27 employees punch in and do not punch out while they are working.
28 When employees clock out at the end of the shift, the restaurant’s
computer terminal automatically generates a receipt for each
employee, which shows the total time worked that day. The receipt
allows employees to immediately raise any questions concerning
their hours . . .

Even if an employee volunteers to work off the clock without
punching in, her manager must not let her do that and must have
her clock in for all training time.

See Restaurant Management (Hourly/Salaried) Handbook, pp. 18-20.

1 Chipotle has also argued that for Plaintiffs to establish that it failed to pay employees for all hours worked,
 2 Plaintiffs would have had to prove that it was aware that employees were working hours for which they were not
 3 compensated. In Forrester v. Roth’s I.G.A. Foodliner, Inc., 646 F.2d 413 (9th Cir. 1981), the Ninth Circuit held
 4 that “where an employer has no knowledge that an employee is engaging in overtime work and that employee
 5 fails to notify the employer or deliberately prevents the employer from acquiring knowledge of the overtime
 6 work, the employer’s failure to pay for the overtime hours is not a violation [of overtime requirements].” *Id.* at
 7 414. The California Court of Appeal adopted Forrester’s analysis in Jong v. Kaiser Found Health Plan, Inc., 226
 8 Cal. App. 4th 391, 395 (2014); *see also* Brinker, 53 Cal. 4th at 1051 (“liability is contingent on proof Brinker
 9 knew or should have known off-the-clock work was occurring”). “[T]hat employees are clocked out creates a
 10 presumption they are doing no work, a presumption [each employee has] the burden to rebut.” *Id.* at 1051.

11 **6(e). Defenses to Plaintiffs’ Meal and Rest Period Claims**

12 Chipotle provided evidence that its employees receive written materials that summarize Chipotle’s meal
 13 and rest period policies. Chipotle also provided evidence that it posts the “Rest & Meal Periods: California
 14 Restaurants Only” policy in all of its California restaurants in employee commons areas. Chipotle’s rest period
 15 policies provide for a 10-minute paid break for every 4 hours of work or major fraction thereof:

POST BOH

REST & MEAL PERIODS

CALIFORNIA RESTAURANTS ONLY | NON-EXEMPT EMPLOYEES

REST PERIOD - 10 MINUTES

1. All employees are provided paid rest periods of at least 10 minutes, in accordance with these Rest Period Guidelines and the state law, for every 4 hours of work or major fraction thereof.
2. Employees must take the rest periods they are provided.
3. The number of paid rest periods provided is based on the amount of time worked.

TIME WORKED	PAID REST PERIODS
0 - 3 hrs 29 min	no rest period
3 hrs 30 min - 5 hrs 59 min	1 rest period
6 hrs - 9 hrs 59 min	2 rest periods
10 hrs - 13 hrs 59 min	3 rest periods
14 hrs - 18 hrs	4 rest periods

4. All rest periods must be work free.
5. No supervising employee may ask or require employees to take a rest period in a manner that violates these Rest Period Guidelines.

26 *See* California Compliance BOH Poster.

27 Chipotle’s meal period policies state that employees who work over 5 hours are to be provided one duty
 28

1 free meal period of at least 30 minutes:

2

MEAL PERIOD - 30 MINUTES	
3	1. Employees who work over 5 hours up to 10 hours during the day are provided one duty free meal period of at least 30 minutes. Employees who work over 10 hours during the day are provided two duty free meal periods of at least 30 minutes each. Meal periods are paid even though they are duty free.
4	2. Employees must take the meal periods they are provided.
5	3. The number of meal periods received is based on the number of hours and minutes worked each day.
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

9 *Id.* Chipotles meal period policy also states:

10 Meal periods must be provided as follows: The first 30-minute
11 meal period must begin before the employee has worked 5 hours.
12 The second 30-minute meal period must begin after the first meal
13 period ends and before the employee has worked 10 hours. All
14 meal periods must be uninterrupted and employees must be
15 relieved of all duties. During meal periods, employees are allowed
16 to leave the restaurant. No supervising employee may interfere
17 with meal periods or ask or require employees to take meal periods
18 in a manner that violates these Meal Period Guidelines.

19 *Id.* On their face, Chipotle’s meal and rest period policies comply with the Labor Code; indeed, they essentially
20 quote verbatim Labor Code 512 and the Wage Order. Chipotle therefore argued that the onus was on the Plaintiffs
21 to prove that Chipotle had a de facto policy of not providing meal and rest periods. In this vein, Chipotle argued
22 that under Brinker, so long as an employer provides employees with a “reasonable opportunity” to take a duty-
23 free meal period, it has no further duty to “police meal breaks and ensure no work thereafter is performed.”
24 Brinker, 53 Cal. 4th at 1040-41. Chipotle further argued that a plaintiff must show the employer actively impeded,
25 discouraged, or prohibited the employee from taking a proper break. *Id.*

26 The California Court of Appeal arguably expanded on Brinker’s holding in Serrano v. Aerotek, Inc., 21
27 Cal. App. 5th 773 (2018). In Serrano, the employer implemented compliant meal period policies, which were
28 distributed to all employees and reviewed during orientation. *Id.* at 776-777. The employer’s policies instructed
employees to notify it if they encountered any problems taking their meal periods. *Id.* Highlighting the employer’s
policy and the plaintiff’s inability to identify specific actions by the employer which prevented her from taking
meal periods, the Court of Appeal affirmed summary judgment in the employer’s favor. *Id.* at 780-782 (“we

1 specifically reject [plaintiffs] contention that ‘time records show[ing] late and missed meal periods creat[ed] a
2 presumption of violations ...’”). Like the Serrano employer, Chipotle argues that it expects its employees to take
3 the entire meal break each day as outlined in its policies. Chipotle thus argues that it did nothing to “affirmatively
4 prevent” its employees from taking their meal and rest breaks. *Id.* at 778, 781-82.

5 **6(f). Defenses to Plaintiffs’ Labor Code Section 2802 Claim**

6 Chipotle provided evidence that instructs employees to seek reimbursement for all necessary business
7 expenses:

8 An Expense Report must be completed when an employee pays for
9 business-related expenses with his or her own money — such as
10 parking for a Company-sponsored event. Expense reports may be
11 submitted after every expense, or on a monthly basis. To be
12 reimbursed, employees need to submit an expense report through
13 the ‘Expenses’ link in Workday. An Expense Report should be
14 submitted within 30 days after the end of the month the expenses
15 were incurred, but no later than 90 days. All expense reports must
16 include appropriate documentation/receipts, be reviewed for
17 accuracy and compliance, and be approved by the employee’s
18 Manager. Once the expense report is approved, the expense
19 reimbursement will be paid as a separate payment. Expense
20 payments will not be included on your regular bi-weekly pay. The
21 method of reimbursement (check, direct deposit, etc.) is
22 determined when you set up your Payment Elections through
23 Workday.

24 *See* Restaurant Management (Hourly/Salaried) Handbook, p.22.

25 Chipotle argued that the Workday app was free to download, and that Aggrieved Employees did not
26 actually incur any “expense” to use the Workday app. Chipotle has argued that employees are entitled to
27 reimbursement for work-related expenses only if they can prove that the employer knew or had reason to know
28 that actual expenses were incurred. *See Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007)
(requirement to reimburse depends on “whether each of those expenses was ‘necessary,’ which in turn depends
on the reasonableness of the employee’s choices”); *Cassady v. Morgan, Lewis & Bockius LLP*, 145 Cal. App.
4th 220, 232 (2006), as modified (Dec. 21, 2006) (Labor Code section 2802 “expressly conditions the right to
indemnity on a showing that the expenditures arose as a direct consequence of the discharge of the employee’s
duties”); *Snap! Mobile, Inc. v. Croghan*, 2019 WL 884177, at *11 (N.D. Cal. Feb. 22, 2019) (“[F]or purposes of §
2802, before an employer’s duty to reimburse is triggered, it must either know or have reason to know that the
employee has incurred an expense”).

1 6(g). *Defenses to Plaintiffs’ Derivative Claims for Wage Statement Violations and Final Pay*
2 *Violations*

3 Chipotle has argued that to award statutory penalties under section 226(e), Plaintiffs would have needed
4 to show that Chipotle “knowingly and intentionally” issued wage statements with unlawful deficiencies. *See*
5 Labor Code section 226; *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142-43 (2011). There was a
6 significant risk that Defendant would have been able to avoid liability due to a defense that it did engage in a
7 “knowing and intentional” violation—as its policies are facially compliant with the Labor Code—and also
8 Chipotle’s assertion that it should not be penalized for mere “technical” violations that do not result in any injury.

9 Regarding final pay violations, Chipotle argued that no waiting-time penalties can be awarded unless the
10 failure to pay wages is “willful,” an element that Plaintiffs candidly admits would have been difficult to prove. *See*
11 8 C.C.R 13520 (“[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an
12 employer intentionally fails to pay wages to an employee when those wages were due.”); *Smith v. Rae Venter*
13 *Law Group*, 29 Cal. 4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will
14 preclude an award of waiting time penalties). Chipotle has argued that an employer’s failure to pay wages is not
15 willful unless it reached the standard of “gross negligence or recklessness.” *See Amaral v. Cintas*, 163 Cal. App.
16 4th 1157, 1203 (2008).

17 Chipotle also argued that PAGA permits Plaintiffs to collect penalties in only two circumstances: where
18 the Labor Code statute in question specifically provides for civil penalties, and where the Labor Code statute in
19 question does not. Where the Labor Code already provides for civil penalties, then a plaintiff may collect those
20 civil penalties, and where it does not, Section 2699(f) provides “default penalties” are to be collected instead. *See*
21 Cal. Lab. Code § 2699(f) (“[f]or all provisions of this code except those for which a civil penalty is specifically
22 provided, there is established a civil penalty for a violation of these provisions.”). Chipotle would therefore have
23 claimed that it would be improper to collect the penalties already provided for issuing inadequate wage statements
24 under section 226. *See Rosenstein v. Pratt*, No. 15-CV-2183-JM-JLB, 2016 WL 308593, *3 (S.D. Cal. Jan. 25,
25 2016) (“section 2699 is inapplicable here, as [section] 226 already [has] penalties for Plaintiff’s allegations”).
26 Furthermore, Chipotle would have argued that federal authority holds that statutory damages and civil penalties
27 predicated on the same underlying alleged wrong cannot be “stacked” on top of one another. *See Smith v. Lux*
28 *Retail N. Am., Inc.*, No. C 13-01579 WHA, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013).

1 6(h) *The Relief Provided by the Settlement Is Genuine and Meaningful and Accomplishes*
2 *PAGA’s Objectives*

3 In light of the foregoing defenses and authorities, Plaintiffs determined a realistic range of recovery for
4 PAGA penalties by offsetting Chipotle’s maximum potential exposure by: (i) the strength of the above defenses
5 to the merits of Plaintiffs’ claims; (ii) the risk of the Court finding that a PAGA trial would be unmanageable; (iii)
6 the risk of losing on any of a number of dispositive motions that could have been brought between now and trial
7 (e.g., motions for summary judgment and/or motions in limine) that might have eliminated all or some of
8 Plaintiffs’ claims, or barred evidence/testimony in support of the claims or quantify damages; (iv) the risk of
9 losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to
10 collecting on a judgment.

11 6(i). It must also be noted that the PAGA gives the Court wide latitude to reduce the amount of civil
12 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result in an
13 award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA
14 penalties, courts have considered issues including whether the employees suffered actual injury from the
15 violations, whether the defendant was aware of the violations, and the employer’s willingness to fix the violation.
16 Carrington v. Starbucks Corp., 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.21% of the
17 maximum); *see also* Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); Fleming v. Covidien Inc.,
18 No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

19 6(j). For example, during the penalty phase of trial in Carrington, the plaintiff requested PAGA
20 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or 0.21%**
21 **of the maximum**—and stated that this reduction was warranted because imposing the maximum penalty would
22 be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply with meal period
23 obligations and because the court found the violations were minimal. Carrington, 30 Cal. App. 5th at 517. The
24 Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529.
25 Likewise, in Covidien, the Court reduced the potential penalties by over 82%, awarding \$500,000 instead of
26 maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also* Aguirre v. Genesis Logistics,
27 No. SACV1200687JVSANX, 2013 WL 10936035, at *3 (C.D. Cal. Dec. 30, 2013) (reducing the original penalty
28 of \$1.8 million by 72% to \$500,000 noting among other reasons that the maximum penalty would be punitive

1 without evidence that the employer intentionally violated the wage order). These reductions were granted after
2 the allegations were proven at trial.

3 6(l). Considering the weight of the evidence, the clarity of the applicable law, and the strength of the
4 factual and legal defenses likely to be asserted by the Chipotle, Plaintiffs estimated the chances of recovering
5 *maximum* penalties at trial at less than 5%, which is the product of the following contingent events: [the odds that
6 a PAGA trial would be found manageable ($\approx 50\%$)] \times [the odds of prevailing on all summary judgment/motions
7 in limine on the claims ($\approx 50\%$)] \times [the odds of prevailing at trial on the claims and recovering full penalties (\approx
8 15%)] \times [the odds of prevailing on appeal, i.e., a complete affirmance of all awarded penalties ($\approx 25\%$)]. There is
9 still a risk, however, that the Court will still exercise its discretion to reduce PAGA penalties.

10 6(m). As discussed above, after considering the issues, defenses, and the risks, Plaintiffs determined that
11 the settlement for a limited release of PAGA penalties is a fair and just result, and furthers PAGA's objectives by
12 imposing sufficient civil penalties "to punish and deter" Chipotle from committing any of the Labor Code
13 violations alleged. Courts throughout the county routinely approve settlements that provide a similar discounted
14 range of the maximum potential recovery. See, e.g., In re Warfarin Sodium Antitrust Litig., 212 F.R.D. 231, 256-
15 58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated
16 damages); In Re Armored Car Antitrust Litig., 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value
17 of 1% to 8% of the estimated total damages were approved); In Re Four Seasons Secs. Laws Litig., 58 F.R.D. 19,
18 37 (W.D. Okla.1972) (approving 8% of damages); Balderas v. Massage Envy Franchising, LLP, 2014 WL
19 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery
20 "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and
21 expense of continued litigation."); In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)
22 (approving settlement of 6% to 8% of estimated damages).

23 7. **Class Definition and Estimate of Number of Individuals in the Settlement Class**

24 The proposed Settlement Class is defined as:

25 The "Class Member" shall consist of any current or former employee of Chipotle who
26 was hired before August 1, 2014 and who worked in California at any time between
27 October 1, 2014 and August 1, 2020 ("Class Period"). Each person in the class is a "Class
Member," and all such persons are referred to as the "Class."²⁰

28 ²⁰ The membership of the Certified Wage Statement Class and the proposed Settlement Class are
identical because they both are comprised of only employees hired before August 1, 2014. Any

1 Excluded from the Class are any California employees that are members of the collective
2 in the currently pending Turner v. Chipotle Mexican Grill, Inc., Case No. 1:14-cv-02612-
3 JLK-CBS or who have filed individual arbitrations related to that action, as well as any
4 other person who has a pending arbitration or lawsuit as of the date hereof.

5 Based upon information provided by Defendant, I estimate that there are approximately 6,901 members
6 of the Class, with 6,337 former employees.²¹

7 **8. Formal and Informal Discovery Exchange and Other Factual Investigation**
8 **Conducted to Determine Size of the Class and Strength of Claims**

9 The Parties have conducted significant investigation of the facts and law both before and after the
10 Action was filed. Plaintiff and their counsel diligently pursued an investigation of the Settlement Class
11 Members' claims against Chipotle, any and all applicable defenses, and the applicable law. Counsel for
12 the Parties have further investigated the applicable law as applied to the facts discovered regarding the
13 claims, the defenses and the associated damages, penalties and civil penalties. Plaintiffs have considered
14 the expense and length of continued proceedings necessary to conclude the Action through trial and any
15 possible appeals on class certification issues or trial outcome. Plaintiffs have also taken into account the
16 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such
17 litigation, including the special issues involved in class actions. Based on their own independent
18 investigation and evaluation, Plaintiffs' counsel is of the opinion that the Settlement is fair, reasonable
19 and adequate and is in the best interest of the Class in light of all known facts and circumstances,
20 including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues.

21 8(a). Class Counsel represent that they have conducted a thorough investigation into the facts of
22 this case, and have diligently pursued an investigation of the Class Members' claims, including: (1)
23 interviewing Class Members and analyzing the results of Class Member interviews; (2) reviewing
24 relevant policy documents; (3) researching the applicable law and the potential defenses; and (4)

25 employee hired after August 1, 2014, signed an arbitration agreement. Approximately 500 of the
26 original 6,993 members of the Certified Wage Statement class are still employed by Chipotle.
27 Therefore, the Class Period extends to August 1, 2020, to cover the dates of employment of all members
28 of the Class.

²¹ If the number of Class Members exceeds 6,993 by more than 10 percent, or if the number of wage
statements exceeds 73,665 by more than 10 percent, the Gross Settlement Amount will increase by a
proportionate percentage for all members or wage statements above the allowance.

1 reviewing relevant data including time records and pay data. The Parties have conducted significant
2 investigation of the facts and law both before and after the Action was filed. The Parties have
3 extensively litigated the case over four years. Eight depositions have been completed.

4 8(b). Class Counsel facilitated the formal request for the records of Plaintiff Turley pursuant to
5 Cal. Labor Code §226 and §1198.5, and reviewed the results with her. Plaintiffs diligently pursued an
6 investigation of the claims, any and all applicable defenses, and the applicable law. The investigation
7 included formal written discovery, depositions, and exchange of payroll data pursuant to mediation.
8 When Plaintiffs believed that Defendant was not producing the required documents and deponents,
9 Plaintiffs filed Motion to Compel further discovery, which resulted in the production of additional
10 documents and witnesses.

11 8(c). Plaintiffs' counsel reviewed thousands of pages of payroll records provided by Chipotle in
12 response to formal Requests for Production ("RFP's"). Both parties propounded Form Interrogatories,
13 RFP's, and Special Interrogatories. Chipotle provided over 25,000 pages in response to Plaintiffs' RFP's,
14 including wage statements and punch data for hundreds of class members.

15 8(d). Prior to class certification, Plaintiffs' counsel interviewed over 50 class members, and
16 secured declarations from approximately 25 class members. Chipotle deposed five class members,
17 reviewing each individual's entire payroll and employment file prior to the depositions. Plaintiff took the
18 depositions of Chipotle PMK (Person Most Qualified), a Team Director with responsibility for some 54
19 California restaurants, as well a senior California store manager. Plaintiff's expert was also deposed.

20 8(e). Plaintiffs' counsel reviewed thousands of pages from nearly a dozen potentially-related
21 cases including but not limited to Segovia v. Chipotle, Case No. BC489851 (LA County Superior Court);
22 Turner v. Chipotle, Case No. 1:14-cv-02612-JLK-CBS; Porras v. Chipotle, No. CV-19-000937 (Stanislaus
23 County Superior Court); (2) Le Sure, et al. v. Chipotle, No. 19STCV05589 (Los Angeles County Superior Court);
24 (3) Sanchez v. Chipotle, No. CIVDS1910956 (San Bernardino) ("Sanchez"); and (4) Barber v. Chipotle, No. 20-
25 2016-864261 (Orange County Superior Court). (The Porras, Le Sure and Sanchez cases were also settled at the
26 Mediation with Jeff Krivis.)

27 8(f). Prior to Mediation, Plaintiffs' Counsel reviewed the time and wage records and prepared
28 a detailed damages model. Id. Plaintiffs' counsel has reviewed the payroll records with their expert

1 Stephen Moses, who is submitting a declaration herewith. Plaintiffs’ counsel has also reviewed the
2 expert report of Berger Consulting Group, LLC (“BCG”), prepared in the Porras, Le Sure and Sanchez
3 actions, which analyzed timekeeping data for over 10,000 pay periods during the Class Period.

4 8(g). Chipotle denies any wrongdoing or legal liability arising out of any of the facts or
5 conduct alleged in the Action, and believes that it has valid defenses to Plaintiffs’ claims. The parties
6 participated in a full-day mediation on October 1, 2019, with Mr. Krivis. Plaintiff considered the
7 settlement negotiations conducted by the Parties and the recommendations of the Mediator, who is
8 highly experienced in employment litigation, including class and complex litigation.²² Plaintiff
9 considered the negotiations and the recommendations of the Mediator. The parties reached an
10 agreement regarding the material terms of a proposed settlement that would fully resolve the Action.
11 The settlement negotiations were vigorous, truly arms’ length, and involved a contentious—albeit
12 collegial—debate. Granting the present Motion may lead to early resolution of this case, obviating the
13 risk that contested certification of all classes sought might not be achieved and eliminating the expense
14 and uncertainty inherent in the time-consuming process of trial and possible appeal. The parties
15 attended an MSC and continued to work with the mediator to improve the settlement.

16 8(h). After a careful analysis of all of the relevant factors, I have formed and now hold the
17 opinion that the terms and conditions embodied in the settlement are fair, reasonable, and equitable; that
18 they represent a good result; and that the risks and delay of further litigation likely outweigh the
19 potential benefits that might be derived from further litigation. In sum, in light of the detailed defenses
20 articulated by the defense and the inherent difficulties in cases of this nature, including the procedural
21 difficulties of achieving and maintaining class certification, I have concluded that the Settlement is in
22 the best interests of the employees who comprise the Settlement Class, particularly in light of the fact
23 that the bulk of financial exposure faced by the defense derives from penalties and civil penalties, the
24 recovery of which is oft criticized in the case law and subjected to close scrutiny and severe limits.

25 **9. Settlement Terms**

26 In consideration for the release of claims, Defendant shall pay, or cause to be paid, the total sum

27
28 ²² Indeed, Mr. Krivis is a pioneer in the mediation of wage and hour class actions. [https://
firstmediation.com/](https://firstmediation.com/) (last accessed August 19, 2020).

1 of **\$1,750,000.00** (the “Gross Settlement Amount”), in cash, for payment of all claims, payment of
2 claims administration, attorney fees, attorney expenses, a payment to the LWDA, and service award.
3 The following litigation costs and costs of administration will be deducted from the Gross Settlement
4 Amount: (a) attorneys’ fees and recoverable costs; (b) administration fees not to exceed \$50,000; (c) a
5 net payment to the Labor Workforce Development Agency in the amount of \$50,000; (d) a service
6 award to Turley not to exceed \$2,500 for her services as Class Representative; (e) attorney fees in an
7 amount not to exceed 33.33% (\$583,333) and reimbursement of actual costs not to exceed \$25,000.

8 The “Net Settlement Amount” will equal the net amount available for payment of claims to Class
9 Members, as follows: \$1,039,167. The amount is calculated as \$1,750,000 less: (a) settlement
10 administration fees not to exceed \$50,000; (b) a net payment to the Labor Workforce Development
11 Agency in the amount of \$50,000; (b) a service award to Turley not to exceed \$2,500 for her services as
12 Class Representative; (d) attorney fees in an amount not to exceed 33.33% (\$583,333) and
13 reimbursement of actual costs not to exceed \$25,000. Class Members who do not affirmatively opt-out
14 of the settlement will receive a check in amount equal to a pro-rata share of the Net Settlement Amount
15 based on pay periods worked during the Class Period. This average payment will equal approximately
16 \$150.

17 **9(a). Class Members do not have to submit claims forms or take any action to participate.**
18 Class Members who do not affirmatively opt-out of the settlement will receive a pro-rata share of the
19 Net Settlement Amount based on pay periods worked during the Class Period. Because the parties
20 intend to provide as much relief as practicable to the Class Members, the parties will facilitate a second
21 distribution to the Class Members who cashed their checks during the first round (the “Second
22 Distribution”) if the amount of uncashed first checks exceeds \$27,500.²³ Following the Second
23 Distribution, if any, any checks not cashed within 180 days of payment shall be paid to the California
24 pro bono law firm, Public Counsel, if approved by the Court, in accordance with CCP §384, subd. (b).
25 No counsel or party has any interest or involvement in the governance of work of the proposed *cy pres*

26
27 ²³ This takes into account the costs of administering the second mailing would be approximately
28 \$6,500, providing for checks of at least \$3.00 each to the Class Members. The administration costs for
the Second Distribution, if it occurs, will be in addition to the estimated cost for initial administration of
the Settlement.

1 recipient. The Court has indicated that it will consider whether the proposed cy pres recipient is
2 appropriate at final approval.

3 9(c). The Settlement has five components: (1) the Gross Individual Settlement Payment; (2)
4 the Class Representative Payments; (3) the Attorney Fee and Expense Award; (4) the Administration
5 Costs; and (5) the PAGA Payment. Chipotle is not obligated to pay any additional amounts to satisfy its
6 obligations related to this Settlement, which, if approved, would be allocated as follows:

7 9(d). Class Representative Enhancement Fee. In recognition of her efforts and risk in
8 prosecuting this matter, Plaintiff may apply for an enhancement fee of up to Two Thousand Five
9 Hundred Dollars (\$2,500) for the services rendered as class representatives. Harris Decl. Ex. 1, ¶ I(r).

10 9(e). Attorneys' Fees and Costs. Plaintiffs' counsel intends to apply to the Court for a fee award,
11 plus expenses and costs incurred. Defendants will not object to a claim for attorney fees of up to 33.33%
12 of the Gross Settlement Amount (or \$583,333), and actual costs as documented in billing statements of
13 the attorneys for the named Plaintiffs, estimated not to exceed \$25,000. Harris Decl. Ex. 1, ¶ II(r).

14 9(f). Claims Administration Costs and Expenses. The estimated costs and fees associated with
15 administration of the Settlement is \$50,000. Harris Decl. Ex. 1, ¶ C(17). The proposed administrator,
16 Phoenix Class Action Administration ("Phoenix") has submitted a bid (Exhibit 4), which is currently
17 capped at \$49,500, slightly less than the allocated cost.

18 9(g). LWDA Payment. The Claims Administrator will pay to the LWDA, in accordance with
19 California Labor Code section 2699(i), in connection with the releases provided in the Settlement of
20 claims by Settlement Class Members under PAGA, California Labor Code section 2698 *et seq.*, the *net*
21 amount of Fifty Thousand Dollars (\$50,000.00). Harris Decl. Ex. 1, Ex. 1, ¶ I(r). Because this payment
22 represents 75% of the civil penalties, the total civil penalties would be \$66,667. *See Brooks v.*
23 *AmeriHome Mortgage Co., LLC* (2020) 47 Cal.App.5th 624, 628-629 ("If the PAGA action results
24 in penalties, LWDA recovers 75 percent and the aggrieved employees recovers the remaining 25 percent
25 of those penalties.")

26 **10. Estimate of Compensation to Average Class Member and Reasonableness of the**
27 **Estimated Payments.**

28 "Gross Individual Settlement Payment" means the gross amount of the Net Settlement Amount

1 (cash or food voucher) each Participating Class Member will be paid. The Gross Individual Settlement
2 Payments will be calculated and paid as follows: Class Members who do not affirmatively opt-out of
3 the settlement will be mailed a check for a pro-rata share of the Net Settlement Amount based on pay
4 periods worked during the Class Period. On average, a Class Member will receive a net payment of
5 \$150 [**\$1,039, 167**(Net Settlement Amount) / 6,901 (Class Members) = **\$150**]. This amount represents
6 a good result considering that the alleged violation certified by the Court and bulk of penalties only
7 involved penalties for 13 pay periods for wage statement violations which are far from the most
8 egregious.

9 This result is fair, adequate and reasonable. Because the Settlement is non-reversionary, there is
10 no incentive for the defendant to impose restrictive eligibility conditions. Further, to warrant approval,
11 “[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by
12 experienced and competent class counsel.” In re American Bank Note Holographies, Inc., Securities
13 Litigation, 127 F.Supp.2d 418, 429-30 (S.D.N.Y. 2001).

14 **11. Estimate of Total Amount of Damages, Monetary Penalties or Other Relief that the**
15 **Class Could Reasonably be Expected to be Awarded at Trial, Taking Into Account the Likelihood**
16 **of Prevailing**²⁴

17 ***11(a). Failure to pay all wages upon termination in violation of Labor Code §§ 201, 202 and***
18 ***203***

19 For her first cause of action, Plaintiffs seek damages under California Labor Code sections 201,
20 202 and 203. Plaintiff alleges that she was terminated on January 16, 2015, but did not receive her final
21 paycheck until February 3, 2015. Complaint, ¶10. In like regard, Plaintiff alleges that Defendant has
22 not compensated its other discharged and quitting employees as required by sections 201 through 203 of
23 the Labor Code. Id. However, in this case, the Court failed to certify the proposed class, stating:

24 Plaintiff has not identified a common policy that results in liability as to the defined
25 subclass. The fact that final paychecks must be delivered from out of state does not necessarily
26 mean that final paychecks will be issued late. Indeed, Chipotle has evidence that, at least where
a termination is planned, its managers are expected to make a request for a final paycheck in

27 ²⁴ Plaintiff has revised the possible recoveries based upon revised/corrected data, updated analysis of
28 the probabilities of success and recent clarifications in the law e.g. Kims v. Reins. Further, the Supreme
Court of California has not yet weighed in on the state of the technical wage statement violations alleged
by Plaintiff, and the Court of Appeals has conflicting rulings.

1 advance of the last day of work in order to ensure that the final paycheck can be given to the
2 employee on the last day of work.

3 Class Certification Order, p.14.

4 In short, the final paycheck subclass cannot be certified because Plaintiff has not
5 produced evidence of a common policy or practice that resulted in class-wide violations. Rather,
6 the common practice at the heart of the motion - issuing final paychecks from out-of-state - may
7 or may not result in a violation depending on the individual circumstances. Individual inquiries
8 predominate and there are no substantial benefits from proceeding as a class.

9 Class Certification Order, p.16.

10 There, absent a successful appeal, Plaintiff will only be able to proceed on her individual
11 continuing wages claim at trial. Therefore, the total possible damages would be \$943.20 (= \$52.40 [final
12 paycheck] * 18 [days late]). However, Chipotle purports that it paid Turley \$677.60 on October 20,
13 2015, as a “settlement” check for her final wages. See August 14, 2018, Declaration of Robert Mussig
14 in Support of Chipotle Motion for Summary Judgment. Plaintiff disputes this characterization of the
15 check, but in the trial context, the \$677.60 payment could be applied as an offset toward any judgment.
16 Therefore, the probable outcome for this cause of action would be \$265.60. Thompson alleges that he
17 received her paycheck approximately several months late. Therefore, his potential damages would be
18 approximately \$900 (= \$30 [final paycheck] * 30 [days late]). (Of course, Plaintiff would most likely
19 appeal the denial of class certification if the Settlement is not approved, and the case goes to trial.)

20 ***11(b). Cal. Lab. Code § 226(a), Failure to Provide Compliant Wage Statements***

21 As their second cause of action, Plaintiff brought claims for failure to provide lawful wage
22 statements. Plaintiff alleged that the format of these stubs was illegal. For the time period between
23 October 1, 2014 and March 31, 2015, Plaintiff alleges that Chipotle lists total hours paid, including
24 payments for meal breaks, rather than total hours worked. Plaintiff alleges that Chipotle did not comply
25 with the requirements of subdivisions (a)(2) or (9), in that it does not report total hours worked on the
26 wage statements issued to either its non-exempt workers, a practice which courts routinely hold violates
27 the mandatory requirements of the statute.

28 On November 2, 2018, the Court granted certification of a Wage Statement Subclass, defined as:

All California non-exempt workers who received one or more wage statements from CS
during the period from October 2, 2014 to around April 1, 2015, the date on which CS
wage statements were changed in response to Turley’s case.

Class Cert, Order (“Class Certification Order”), p. 23:20-23. The Court stated that “[t]he wage

1 statement subclass, narrowed to individuals who did not sign arbitration agreements is certified. The
2 parties must confer on the precise wording of the class definition, and should consider whether it
3 includes (i) individuals hired before August 1, 2014 or October 2, 2014 and (ii) whether it ends March
4 30, 2015 or some other date, e.g., in April 2015.” Id.

5 Chipotle stated in its Opposition to Plaintiff’s Class Certification Motion (CS Opp.) that “[g]iven
6 the timing of the Segovia release (i.e., through October 1, 2014) and the rollout of the arbitration
7 agreements (i.e., on August 1, 2014), the proposed class is effectively limited to California employees
8 who were hired *before* August 1, 2014, and continued to work *past* October 1, 2014. Approximately
9 **7,608** individuals fall into this category.” CS Opp. 10:5-8. The number was ultimately determined to be
10 6,901 for purposes of settlement. This accounts for the reduction of potential damages.

11 It should be noted, however, that some courts have “held that employers are not subject to
12 heightened penalties for subsequent violations unless and until a court or commissioner notifies the
13 employer that it is in violation of the Labor Code.” *See e.g. Amalgamated Transit Union Local 1309 v.*
14 *Laidlaw Transit Service, Inc.*, 2009 U.S. Dist. LEXIS 69842, 2009 WL 2448430, at *9 (S.D. Cal.
15 Aug.10, 2009); *see also Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658
16 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not
17 subject to heightened penalties for subsequent violations unless and until a court or commissioner
18 notifies the employer that it is in violation of the Labor Code”). While Plaintiffs regard this
19 interpretation as flawed, their nonetheless recognize that this interpretation has gained traction with
20 some courts. Thus, if Plaintiffs were not awarded “subsequently” penalties and only “initial” penalties
21 for all violations, Defendant’s exposure would be reduced significantly.

22 Again, this potential maximum recovery would have to be deeply discounted as Chipotle has
23 offered a vigorous defense of the lawsuit, and denies any liability. Further, proving that any of the
24 violations were willful or intentional will be exceedingly difficult given that this appears to have been
25 correct by April 1, 2015, that was remedied immediately upon discovery by Defendant. Also, in
26 reducing penalties, courts have considered issues including whether the employees suffered actual injury from the
27 violations, whether the defendant was aware of the violations, and the employer’s willingness to fix the violation,
28 which Chipotle has clearly undertaken. Carrington v. Starbucks Corp., 30 Cal. App. 5th 504, 528 (2018). The

1 likelihood of success here, therefore, is fairly low. Further, the California Supreme Court has not yet
2 ruled on the type of technical wage statement matters at issue here, and the Court of Appeals decisions
3 are in conflict. Therefore, at this stage, we would estimate the likelihood of success at approximately
4 33.33%, leaving a likely recovery on this claim of \$2,332,900 (\$6,998,700 x .3333).

5 ***11(c). Cal. Lab. Code § 226(b), Failure to Provide Employment Records Upon Request***

6 As their third and eighth cause of action, Plaintiff Turley brought claims for failure to provide
7 employment records upon request. Pursuant to Labor Code section 226(b), an employer shall afford
8 current and former employees the right to inspect or copy the records pertaining to that current or former
9 employee, upon reasonable request to the employer. Plaintiff Turley alleged that Defendant failed to
10 provide her with an opportunity to inspect or copy her employment records pursuant to her requests.
11 (Thompson does not allege that his payroll records request was untimely.) Pursuant to Labor Code
12 section 226(f) and (g), Plaintiff would be entitled to a seven-hundred-fifty dollar (\$750) penalty for
13 each, reasonable attorney's fees, and the cost of bringing this cause of action, for the alleged violation.
14 Here, Chipotle has offered a vigorous defense of this cause of action, providing evidence of its response
15 to the 226 request on April 3, 2015. In any event, this cause of action was not presented for
16 certification, so the maximum recovery would be \$750 plus attorney fees and costs for the individual
17 cause of action. Therefore, discounting the possibility of recovery by 50%, the total estimated recovery
18 would be \$375.

19 ***11(d). Code § 226.7, Failure to Provide Proper Rest Breaks.***

20 The Court denied class certification on the Rest Break and Meal Break issue, stating:

21 Aside from the variation in Chipotle's policy for recording time spent on rest periods, the
22 rest period claim tracks the meal period claim; indeed the parties briefed the meal and rest period
23 claims together. Thus even setting aside the limited data available to support the rest period
24 claim, Plaintiff has not established predominance, manageability, or superiority as to the rest
25 period claim for the same reasons that she has not established those elements as to the meal
26 period claim.

27 Class Certification Order, p.13. Therefore, Plaintiff Turley can only proceed on a non-class, individual
28 basis at trial for the alleged failure to provide proper meal and rest breaks. During her employment with
Chipotle, Plaintiff alleges that Chipotle failed to provide Plaintiff proper meal and rest breaks. Sections
226.7 and 512 of the Code provide that employees must receive meal periods of not less than thirty
minutes if an employee works for a period of more than five hours and a second thirty-minute meal

1 period if an employee works for a period more than ten hours in a workday. In addition, it provides that
2 employees must receive rest periods of then minutes for each four hours of work. An employer's failure
3 to provide meal and rest breaks results in the imposition of civil penalties on the employer as stated in
4 Code §226.7 (\$50 for the initial violation and \$100 for each subsequent violation.). On various
5 occasions, Turley was not provided with the required thirty-minute meal period and/or was not provided
6 with all required rest breaks. For instance, as reflected on her time cards, she received a meal-period
7 wage for an additional hour of pay for certain days where she worked through her meal break. However,
8 although she was paid these amounts, Chipotle did not pay the required penalty under Code §226.7. A
9 review of the time records provided by Chipotle for Plaintiff Turley's employment between May, 2014
10 and January, 2015, (approximately 36 weeks) indicate that these missed rest and meal breaks occurred
11 approximately 40% of the time. Estimating a violation rate of two per week, the estimated amount of
12 recovery based upon this cause of action would total **\$3,550**, calculated as follows.

13 Using a projected 40% liability rate, and an average wage of \$12 per hour, Plaintiff Turley
14 presently estimates that damages for the period from May, 2014 through February, 2015, will be in the
15 neighborhood of **\$864** (=36 [weeks] * 2 [violations per week] * \$12 [average hourly wage])²⁵. The
16 Civil Penalty is estimated at: [(\$50 for first violation) + (\$100 *71 subsequent violations) = **\$7,150**.
17 For Plaintiff Thompson, who was employed from March, 2015 through December, 2015, his estimate
18 for damages for that period would be in the neighborhood of **\$960** (=40 [weeks] * 2 [violations per
19 week] * \$12 [average hourly wage]). The Civil Penalty is estimated at: [(\$50 for first violation) +
20 (\$100 *19 subsequent violations) = **\$1,950**. The total estimated recovery for this cause of action for
21 both Plaintiffs would be **\$10,060**.

22 Proving the rest break claim on a class-wide basis would prove daunting, as the company
23 stopped tracking rest breaks in its records on or about June 23, 2015. Moreover, Chipotle provided over
24 350 declarations from Class Members stating that they received compliant rest breaks. Chipotle also
25

26 ²⁵ According to the analysis of Plaintiff's expert Stephen Moses, Turley did not have compliant rest
27 breaks on October 8, 21, 31 and December 16, 2014. On October 2, 15, 16, 17, 24, 28, November 1, 4,
28 10, 13, 17, December 13, 14, 21, 23, 24, 27, 29, 30 2014, Turley worked for over six hours, yet received
a single rest break, **after** her meal break. See May 22, 2018, Declaration of Stephen Moses, ¶¶9-21.
Moses has supplied a new declaration, filed herewith, regarding the reasonableness of the proposed
settlement.

1 changed its internal procedures for providing rest breaks following the filing of this lawsuit. Finally, the
2 Court denied certification of this class stating that individual questions of proof would predominate, as
3 well as facing manageability and superiority issues. Class Cert. Order p13.

4 ***11(e). Code § 226.7, Failure to Provide Proper Meal Breaks.***

5 As stated above, the Court denied class certification for the Meal Break class. Therefore, only
6 the individual claims could be brought at trial. Sections 226.7 and 512 of the Code provide that
7 employees must receive meal periods of not less than thirty minutes if an employee works for a period
8 of more than five hours and a second thirty-minute meal period if an employee works for a period more
9 than ten hours in a workday. In addition, it provides that employees must receive rest periods of then
10 minutes for each four hours of work. An employer's failure to provide meal and rest breaks results in
11 the imposition of civil penalties on the employer as stated in Code §226.7 (\$50 for the initial violation
12 and \$100 for each subsequent violation.).

13 11(f). The amount of damages would be comparable to the rest break damages above. Using a
14 projected 40% liability rate, and an average wage of \$12 per hour, Plaintiff Turley presently estimates
15 that damages for the period from May, 2014 through February, 2015, will be in the neighborhood of
16 **\$864** (=36 [weeks] * 2 [violations per week] * \$12 [average hourly wage])²⁶. The Civil Penalty is
17 estimated at: [(\$50 for first violation) + (\$100 *71 subsequent violations) = **\$7,150**. For Plaintiff
18 Thompson, who was employed from March, 2015 through December, 2015, his estimate for damages
19 for that period would be in the neighborhood of **\$960** (=40 [weeks] * 2 [violations per week] * \$12
20 [average hourly wage]). The Civil Penalty is estimated at: [(\$50 for first violation) + (\$100 *19
21 subsequent violations) = **\$1,950**. The total estimated recovery for this cause of action for both
22 Plaintiffs would be **\$10,060**.

23 11(g). After analyzing 11,737 pay periods, 87,823 shifts, and 22,051 workweeks, for a random,
24 representative sample of employees from stores from around the state during the Class Period²⁷, Berger

25 ²⁶ According to the analysis of Plaintiff's expert Stephen Moses, Turley had tardy meal breaks on
26 October 20, 31, and December 5 and 16, 2014. She had no required meal break on November 6,
27 December 2, 3, or 31. On December 9 and 16, 2014, her lunch was truncated. On December 17, 2014,
28 Turley worked for over ten hours, but was not provided any second meal break and her first meal break
was truncated. May 22, 2018, Declaration of Stephen Moses, ¶¶9-21.

²⁷ "Store 1091," "Store 1134," "Store 1231," "Store 1378," "Store 1460," "Store 1778," "Store
1816," "Store 2237," "Store 2653," and "Store 2865." Each row of the timekeeping data included,

1 Consulting Group (“BCG”) which has provided data analysis and damage exposure for over 750 cases,
2 indicated that 60% of shifts worked more than 5 hours were recorded without a 1st meal break.
3 However, this does not indicate a 29% violation rate, because many crew members had meal waivers
4 and many others were paid meal penalties. Again, as discussed, proving the meal break issue would
5 prove extremely difficult as Chipotle has provided over 350 declarations from Class Members stating
6 that they received compliant rest break. Most importantly, the Court denied class certification due to
7 individual questions of proof would predominate, as well as manageability and superiority issues. Class
8 Cert. Order p13. Likewise, any other plaintiff seeking to certify such a class would face a daunting task.
9 The verdict value of this class claim, therefore, is also negligible.

10 ***11(h). California Business and Professions Code § 17200 et seq., Unfair Competition.***

11 For her sixth cause of action, Plaintiff seeks damages under California Labor *California Business*
12 *and Professions Code § 17200 et seq.* Plaintiff contends that Chipotle’ unlawful business practices, as
13 described above, entitle Plaintiff and putative class members to seek the remedies available under
14 California Business and Professions Code §17200 *et seq.*(UCL). The UCL provides for injunctive relief
15 and restitution. Here, compensatory damages are not available under the UCL. However, a court may
16 provide Plaintiff with restitution in the form of backpay and interest that was unlawfully withheld from
17 an employee’s wages. Cortez v. Purolator Air Filtration Prods. Co., 23 Cal. 4th 163, 179 (2000). The
18 Class only has accrued penalties, and no backpay wages due. Therefore, the potential recovery under
19 this cause of action has been deeply discounted to zero.

20 ***11(i). PAGA Penalties - Cal. Lab. Code § 2698 et seq.***

21 Plaintiff seeks civil penalties pursuant to PAGA failure to provide continuing wages to
22 Aggrieved Employees (including reporting time) in violation of Labor Code § 203.²⁸ With estimated

23 among other things, (1) an indication of employee identification number, (2) an indication of the date on
24 which an employee worked, (3) an indication of the time that an employee clocked in, (4) an indication
25 of the time that an employee clocked out, and (5) an indication of the number of hours paid. Each row of
26 the payroll data included, among other things, (1) an indication of employee identification number, (2)
27 an indication of the start and end dates of the pay period, (3) an indication of the number of “Regular”
28 hours worked and amount paid, (4) an indication of the number of “Overtime” hours worked and
amount paid, if applicable, (5) an indication of the number of “Double time” hours worked and amount
paid, if applicable, (6) an indication of the number of “Break” hours worked and amount paid, if
applicable.

²⁸ The PAGA notice also listed Unfair Competition (“UC”) and Wage Order 5, but Plaintiff does not believe it could recover these penalties based upon the state of the law.

1 violations, Labor Code Sections 201-203 Violations, the total estimated recovery would be: **\$158,400** =
2 1,584 [Pay Periods] * \$100 [PAGA Penalty]²⁹ Plaintiff is not discounting this result, but it utilizing it
3 as the estimate of recovery of PAGA penalties.

4 Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered goes to the state
5 while the remaining amount is given to the aggrieved employees. Lab. Code § 2699(i). Although PAGA penalties
6 are mandatory and must be awarded by a court if a violation is found, the court “may award a lesser amount than
7 the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular
8 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab.
9 Code § 2699(e)(2); *see also* Amaral v. Cintas Corp. No. 2, 163 Cal. App. 4th 1157, 1213 (2008).

10 11(j). The LWDA has advised that courts should evaluate settlements of PAGA claims based on
11 whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying
12 purpose of the statute to benefit the public.” *O’Connor*, 201 F. Supp. 3d at 1133; *see also*, *Salazar v. Sysco*
13 *Central Cal.*, No. 15-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017) (quoting the above passage).
14 As courts defer to the agency’s interpretation of a statute where authority has been delegated to that agency (*see*
15 *New Cingular Wireless PCS, LLC v. Pub. Utilities Comm’n*, 246 Cal. App. 4th 784, 807 (2016)), the Court
16 should analyze the PAGA settlement by focusing on whether the amount of civil penalties obtained is “genuine
17 and meaningful” in light of PAGA’s statutory purpose.

18 11(k). In assessing whether the amount of civil penalties is genuine and meaningful, the Court may
19 balance the amount in penalties against the risks of further litigation. Some courts have “held that employers are
20 not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the
21 employer that it is in violation of the Labor Code.” *See e.g.* Amalgamated Transit Union Local 1309 v. Laidlaw
22 Transit Service, Inc., 2009 U.S. Dist. LEXIS 69842, 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009); *see also*
23 Trang v. Turbine Engine Components Technologies Corp., No. CV 12–07658 DDP (RZx), 2012 WL 6618854
24 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
25 violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor
26 Code”).

27
28 ²⁹ Of course, a terminated or resigned employee would only receive one final paycheck.

1 11(l) Plaintiff would be unlikely to recover any PAGA penalties for the Wage Order or UCL PAGA
2 claims. See Kim v. Reins International California, Inc., 9 Cal.5th 73, 89 (2020) (“[T]here is no right of action
3 under PAGA to enforce an IWC wage order.”) (citing Thurman v. Bayshore Transit Management, Inc., 203 Cal.
4 App. 4th 1112, 1132 (2012) (disapproved on other grounds in ZB, N.A. v. Sup. Ct., 8 Cal.5th 175 2019)). As
5 recognized by the California Supreme Court, a Wage Order can only be enforced through PAGA to the extent a
6 corresponding Labor Code provision provides for its enforcement and that provision and facts and theories giving
7 rise to the claim are identified in the PAGA Notice. Kim, 9 Cal. 5th at 89; Thurman 203 Cal.App.4th at 1132;
8 Brown, 28 Cal.App.5th at 839; Lab. Code § 2699.3(b)(1).

9 11(l). Here, the Court could determine that a greater payment of PAGA civil penalties here might be
10 construed as unjust, arbitrary, oppressive, or confiscatory because Chipotle agreed to attend mediation and settled
11 this case (and the three related cases) at that time, under the guidance of an experienced wage and hour mediator.
12 (Lab. Code, § 2699, subd. (e)(2); Amaral vs. Cintax Corp. No. 2, 163 Cal.App.2d 1157, 1213-1214 (2008).)³⁰

13 11(m). In approving a PAGA settlement, a court may substantially discount penalties. E.g.,
14 Rodriguez v. West Publ’g Corp., 563 F.3d 948, 964 (9th Cir. 2009). Further, the Court may reduce the
15 amount of PAGA penalties awarded to an employee if an award would be “unjust, arbitrary, oppressive,
16 or confiscatory.” Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1135–36 (2012).

17 11(n). Of course, a Court could decline to allow some or all of the PAGA claims to go forward
18 at all on the grounds that the representative PAGA claim would be unmanageable in determining
19 whether Aggrieved Employees were paid late. See, e.g., Ortiz v. CVS Caremark Corp., No. C-12-05859
20 EDL, 2014 WL 1117614, at *4 (N.D. Cal. Mar. 19, 2014). PAGA claims are unmanageable where
21 numerous individualized determinations would be necessary to decide whether each employee has been
22

23 ³⁰ A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable.
24 See e.g., Rebney v. Wells Fargo Bank, 220 Cal. App. 3d 1117, 1139 (settlements found to be fair and
25 reasonable even though monetary relief provided was “relatively paltry”); City of Detroit v. Grinnell
26 Corp., 495 F.2d 448, 455 (2d Cir. 1974) (settlement amounted to only “a fraction of the potential
27 recovery”). Courts recognize that compromise is inherent and necessary in the settlement process.
28 Thus, even if “the relief afforded by the proposed settlement is substantially narrower than it would be if
the suits were to be successfully litigated,” this is no bar to a class settlement because “the public
interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
of avoiding litigation.” Air Line Stewards, etc., Local 550 v. American Airlines, Inc., 455 F.2d 101, 109
(7th Cir.1972.); Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250–51, (2001); see also
Kuang Xuan Liu v. Win Woo Trading, LLC, No. 4:14-CV-02639-KAW, 2017 WL 4283947, at *2–3
(N.D. Cal. Sept. 27, 2017) (5% of PAGA penalties deemed adequate).

1 injured. Ortiz, 2014 WL 1117614, at *4. Because it could be argued that the timeliness of the payment
2 to any Aggrieved Employee is unique, the process could be deemed extremely time-consuming,
3 cumbersome, and unmanageable.

4 11(o). Further, Chipotle has previously filed a Motion for Summary Judgment (“MSJ”) with
5 regard to the PAGA Notice in this case. While Plaintiff disputes the allegations of inadequate notice,
6 Plaintiff’s estimate of recovery of PAGA penalties of **\$158,400** does not account for the possibility of
7 Defendant prevailing on the PAGA MSJ challenge. Therefore, the \$158,400 number is not being
8 discounted at all, but rather, assumes 100% victory on the estimated proven violations (25%).

9 ***11(p). Cal. Lab. Code sections 510, 1194 and 1198—Failure to Pay Proper Overtime***

10 Here, based upon the Class Certification Order, Plaintiff Turley would not be found to be an
11 adequate class representative for an Overtime Class. The Court stated:

12 Turning to the claims in this case, the meal and rest break claims would likely turn on
13 testimonial evidence relating to store level conditions and the reasons that breaks were
14 missed, whereas the wage statement and, to a lesser extent, final payment claims likely
15 depend on documentary evidence (Chipotle's records). With respect to the meal and rest
16 break claims, and to a lesser extent the final payment claim, any certified class would be
17 best served by appointing a representative who is not subject to a credibility attack on the
18 basis of a past felony conviction. If those theories were otherwise properly certified, it
19 might be appropriate to seek a new representative. With respect to the wage statement
20 claim at least, Plaintiff's credibility issues do not render her inadequate.

21 Class Certification Order, p20. The Court did not certify any class for those individuals who executed
22 arbitration agreements. As stated in the Class Certification Order: “If Chipotle successfully moves to
23 enforce its arbitration agreement in these proceedings, individuals bound by the arbitration agreement
24 may be removed from the class.” Class Certification Order, p.17.

25 11(q). Therefore, Plaintiffs could only pursue individual damages for this cause of action. Here,
26 if Plaintiff Turley worked an estimated 1.5 hours of unpaid overtime per week, then she would be
27 due **\$972** for her unpaid overtime during the relevant period ($\$18$ [overtime rate] * 1.5 [hours per week]
28 * 36 weeks]. If Plaintiff Thompson worked estimated 1.5 hours of unpaid overtime per week, then he
should be due **\$1,080** for his unpaid overtime during the relevant period ($\$18$ [overtime rate] *
1.5 [hours per week] * 40 weeks). The damages due under this cause of action would be \$2,052 (= \$972
+ \$1,080).

11(r). Chipotle provided over 25,000 pages in response to Plaintiffs’ RFP’s, including wage

1 statements and punch data for hundreds of class members. The parties interviewed, deposed and
2 gathered declarations from many managers. Plaintiff also received confirmatory discovery following
3 settlement in relation to this case, and three related cases which was analyzed by BCG. However,
4 Plaintiffs' investigation has not uncovered significant, class-wide overtime violations during the Class
5 Period.³¹ According to the BCG expert analysis, it appears that only about 1/3 of total shifts involve
6 overtime. During five full-day class member depositions, the subject of "overtime" was raised only
7 twice. The overtime issue was raised in the Taraneh Tabatabai deposition, and she stated that she had
8 been paid all of her overtime. Again, in the Janie Salguero deposition, the overtime issue was only
9 raised once, and the deponent (a kitchen manager) did not suggest that she was shorted any overtime. In
10 the related Barber case, which deals only with managers and alleged off-the-clock work and overtime,
11 no class certification has been granted and no motion for class certification has ever even filed. If, after
12 four years, Barber has not been able to achieve class certification, it appears that any other plaintiff
13 seeking to certify such a class outside the settlement context would face a daunting task.

14 ***11(s). Cal. Lab. Code sections Labor Code §§ 1194, 1194.2, 1197 and 1197.1—Failure to***
15 ***Provide Proper Minimum Wage***

16 As discussed above, it is not likely that either Plaintiff would found to be adequate class
17 representatives for a proposed class under this cause of action and Plaintiff Thompson would have likely
18 been compelled to arbitration. California Labor Code § 1197.1 provides for a penalty of one hundred
19 dollars (\$100.00) for each underpaid employee for each pay period for which the employee is underpaid,
20 for a total due at least **\$4,000** (\$100 [civil penalty per pay period] * 40 [weeks of underpayment]), along
21 with attorneys' fees. (18 pay periods for Turley and 20 periods for Thompson.)

22 ***11(t). Cal. Lab. Code section 2802—Failure to Reimburse Necessary Expenses***

23 California Labor Code Section 2802 states that employers must "indemnify" an employee for
24 "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
25 his or her duties, or of his or her obedience to the directions of the employer."
26

27 ³¹ The alleged overtime violations encountered by Plaintiff's counsel were typically manager or store
28 specific, which would be easier to prosecute under a PAGA theory. However, Plaintiff did not file a
PAGA notice for overtime violations here, and therefore may not seek PAGA penalties.

1 11(u). Labor Code, Section 2802 would provide for estimated individual damages for failure to
 2 reimburse necessary expenses of under \$50 each for Plaintiffs based upon the revised cell phone
 3 expense model noted above. The total estimated damages for this cause of action would be under \$100.

4 11(v). The following table summarizes the total estimated damages *before attorney fees*.

Table 1: Estimated Recovery Amounts	
Cause of Action	Estimated Recovery
(9) Failure to pay all wages upon termination in violation of Labor Code §§ 201, 202 and 203	\$ 1,165.60
(10) Cal. Lab. Code § 226(a), Failure to Provide Compliant Wage Statements	\$2,232,900
(11) Cal. Lab. Code § 226(b), Failure to Provide Employment Records Upon Request	\$ 375
(12) Code § 226.7, Failure to Provide Proper Rest Breaks.	\$ 10,060
(13) Code § 226.7, Failure to Provide Proper Meal Breaks.	\$ 10,060
(14) California Business and Professions Code § 17200 et seq., Unfair Competition.	\$ 0
(15) PAGA Penalties - Cal. Lab. Code § 2698 et seq.	\$ 158,400
(16) Cal. Lab. Code sections 510, 1194 and 1198— Failure to Pay Proper Overtime	\$ 2,052
(9) Cal. Lab. Code sections Labor Code §§ 1194, 1194.2, 1197 and 1197.1—Failure to Provide Proper Minimum Wage	\$ 4,000
(17) Cal. Lab. Code section 2802—Failure to Reimburse Necessary Expenses	\$ 100
Total Estimated Damages Recovery	\$2,419,212

1 The total estimated damages recovery are revised from the previous motion due to the following
2 factors: (1) Adjustments in the possibility of prevailing based upon intervening case law; (2)
3 Adjustments in the possibility of prevailing based intervening decisions in similar cases being litigated
4 by Plaintiff's counsel; (3) corrections of mathematical errors from the previous calculations; and (4) the
5 likelihood that Thompson's claims would be compelled to arbitration if he remained a plaintiff.

6 *Summary*

7 12. My 40 plus years of litigation experience is detailed below in. This experience includes
8 litigating many hundreds of PAGA lawsuits over the past 20 years, as well as class action cases. I have
9 been named class counsel in dozens of class action cases in state and federal courts in California. While
10 the vast majority of PAGA and class action lawsuits settle, I have served as lead counsel in
11 approximately seven trials involving California wage and hour issues; over a dozen contested hearings
12 before the California Division of Labor Standards Enforcement involving wage and hour litigation; and
13 four class action trials, two of which dealt with California wage and hour issues.

14 13. Chipotle has offered a vigorous defense of the lawsuit, and denies any liability. Further,
15 proving that any of the violations were willful or intentional will be exceedingly difficult.

16 14. The overwhelming bulk of Chipotle financial exposure derives from penalties and civil
17 penalties. In approving a class action settlement, a court may substantially discount penalties. E.g.,
18 Rodriguez v. West Publ'g Corp., 563 F.3d 948, 964 (9th Cir. 2009). Further, the Court may reduce the
19 amount of PAGA penalties awarded to an employee based upon discretionary factors other than the
20 employer's ability to pay. Even if Plaintiff were to receive a judgment, the case could be appealed,
21 resulting in years of further litigation; while, on the other hand, the proposed Settlement will avoid
22 protracted litigation, and is designed to provide monetary benefit to the Class Members during the
23 current economic crisis.

24 15. After calculating Defendant's maximum exposure, Plaintiffs then discounted that exposure for
25 settlement purposes to account for the risks of continued litigation, including: (i) the strength of Defendant's
26 defenses on the merits; (ii) the risk of losing at trial; (iii) the risk that the Court would exercise its discretion under
27
28

1 PAGA to significantly reduce the maximum civil penalties available by statute;³² (iv) the chances of a favorable
2 verdict being reversed on appeal; and (v) the difficulties attendant to collecting on a judgment. Taking into
3 account the above contingencies, Plaintiffs determined that the proposed settlement is fair, adequate, reasonable,
4 and in the best interest of the State of California and aggrieved employees.

5 16. It should be noted that the PAGA gives the Court wide latitude to reduce the amount of civil
6 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result in an
7 award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA
8 penalties, courts have considered issues including whether the employees suffered actual injury from the
9 violations, whether the defendant was aware of the violations, and the employer’s willingness to fix the violation.
10 Carrington v. Starbucks Corp., 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the
11 maximum); *see also* Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); Fleming v. Covidien Inc.,
12 No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

13 17. This case presents a clear risk of further lengthy and expensive litigation, with likely
14 appeals even after trial. Any judgment favorable to Plaintiff would likely be the subject of post-trial
15 motions and appeal, which would prolong the cases for years with the ultimate outcome uncertain. It is
16 also clear that even a victory at trial is no guarantee that the judgment would ultimately be sustained on
17 appeal. Even substantial judgments awarded by trial courts have been reversed on appeal.

18 18. Given the substantial risk of trying the claims, the likelihood that that the Court may
19 strike duplicative penalties, heavily discount the penalties, or decline to try the PAGA claims because
20 the claims are unmanageable, the Settlement Agreement is fair and should be approved.

21 19. Plaintiffs undertook extensive analysis of the PAGA claims, reviewing the analysis of
22 two independent experts, Stephen Moses and BCG, in evaluating the claims. Here, Plaintiff’s only
23 PAGA claim is pursuant to Labor Code §§ 201, 202 and 203.³³ There are no PAGA claims related to
24

25 ³² See Lab. Code § 2699(e) (“In any action by an aggrieved employee seeking recovery of a civil
26 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum
27 civil penalty amount specified by this part if, based on the facts and circumstances of the particular case,
28 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”).

³³ The PAGA notice also listed Unfair Competition (“UCL”) and Wage Order 5, but the UC
damages have been detailed above, and the Wage Order damages are likely to be considered duplicative
of Labor Code 203.

1 meal periods, rest periods, overtime and minimum wages. Therefore, Plaintiff cannot seek penalties for
2 those claims, and has not asked to release those claims. The bulk of Chipotle’s financial exposure
3 derives from penalties and civil penalties. The Court could rule that statutory damages and civil
4 penalties predicated on the same underlying alleged wrong cannot be “stacked” on top of one another.
5 Smith v. Lux Retail N. Am., Inc., No. C 13-01579 WHA, 2013 WL 2932243, at *4 (N.D. Cal. June 13,
6 2013) (refusing to “pile one penalty on another for a single substantive wrong” and noting that “no
7 actual holding in any judicial decision has ever blessed such stacking.”). Accordingly, at the conclusion
8 of a successful trial, Plaintiffs may be limited in their recovery statutory damages and civil penalties for
9 derivative wage-statement violations. The Court could strike the majority of Plaintiff’s PAGA damages
10 because they are duplicative of the damages pursued in the other claims. See, e.g., Ruelas v. Costco
11 Wholesale Corp., 67 F. Supp. 3d 1137, 1143 (N.D. Cal. 2014). In approving a PAGA or class action
12 settlement, a court may substantially discount penalties. E.g., Rodriguez v. West Publ’g Corp., 563 F.3d
13 948, 964 (9th Cir. 2009). Further, the Court may reduce the amount of PAGA penalties awarded to an
14 employee based upon discretionary factors other than the employer’s ability to pay. Thurman, 203 Cal. App.
15 4th at 1112.

16 20. Because UCL actions sound in equity, a defendant may assert equitable defenses, even if
17 these defenses are not available for the underlying Labor Code violation. Cortez, 23 Cal. 4th at 179.
18 These defenses may not wholly defeat a UCL claim, but “may be considered by the court when the court
19 exercises its discretion over which, if any, remedies . . . should be awarded.” Cortez, 23 Cal. 4th at
20 179. See, e.g. Pineda v. Bank of Amer., N.A., 87 Cal. Rptr. 3d 864, 867 (2009), review granted, 93 Cal.
21 Rptr. 3d 536 (2009)(Waiting time penalties under Labor Code Section 203, for an employer’s failure to
22 make immediate payment of wages to an employee who voluntarily terminates employment are not
23 recoverable as restitution under the UCL). Similarly, the Court of Appeal in Price v. Starbucks Corp.,
24 192 Cal. App. 4th 1136, 1144-45 (2011), rejected plaintiff’s argument that the employer was responsible
25 for wage penalties between his last day of work and his official date of termination. See also Pace v.
26 PetSmart Inc., No. SACV 13-00500 DOC, 2014 WL 2511297, at *1 (C.D. Cal. June 3, 2014) (noting
27 that “[t]he ‘Last Day Worked’ is recorded by a store manager and reflects only the employee’s last day
28 *worked*, which may not be their actual date of termination,” and denying certification of late pay class).

1 21. Here, the Court could determine that a greater payment of PAGA civil penalties here might be
2 construed as unjust, arbitrary, oppressive, or confiscatory because Chipotle agreed to attend mediation and settled
3 this case (and the three related cases) at that time, under the guidance of an experienced wage and hour mediator.
4 (Lab. Code, § 2699, subd. (e)(2); Amaral vs. Cintax Corp. No. 2, 163 Cal.App.2d 1157, 1213-1214 (2008)).³⁴

5 22. Here, it is noteworthy that the bulk of the payments are being paid under the class portion of the
6 settlement, rather than as PAGA penalties, as 75% of the PAGA penalties must go to the State, while only 25% of
7 the penalties go to Aggrieved Employees. The parties have allocated the Settlement amounts so that the
8 maximum value is distributed to the class members, rather than the State, even though the State will get its share.

9 23. Chipotle employs a range of titles for its non-exempt employees to delineate their
10 duties e.g. “crew member”, “cashier”, “front of house” versus “back of house” or “take-out specialist” or
11 “service manager” or “kitchen manager”. Even though they may have different titles, employees
12 perform a variety of overlapping non-exempt duties. Chipotle promotes from within, so all hourly, non-
13 exempt “managers” were also hourly, non-exempt crew members. They continued to perform the same
14 non-exempt, manual duties as they performed as crew members, albeit with more supervisory
15 responsibility. However, these non-exempt “managers” do not exercise the discretion that a non-
16 exempt “manager” would typically exercise e.g. they cannot hire and fire other employees. Instead,
17 these discretionary hiring and firing decisions are generally reserved for general managers and other
18 higher level management, who may be non-exempt. Further, many “managers” are promoted quickly
19 and receive comparable pay rates, working alongside the other non-exempt employees performing the
20 same duties. e.g. Daniel Funes apparently became a “manager” *one month of employment*. Finally, these
21 managers did not make policy decisions. The company-wide procedures and policies imposed from the
22

23 ³⁴ A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable.
24 See e.g., Rebney v. Wells Fargo Bank, 220 Cal. App. 3d 1117, 1139 (settlements found to be fair and
25 reasonable even though monetary relief provided was “relatively paltry”); City of Detroit v. Grinnell
26 Corp., 495 F.2d 448, 455 (2d Cir. 1974) (settlement amounted to only “a fraction of the potential
27 recovery”). Courts recognize that compromise is inherent and necessary in the settlement process.
28 Thus, even if “the relief afforded by the proposed settlement is substantially narrower than it would be if
the suits were to be successfully litigated,” this is no bar to a class settlement because “the public
interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
of avoiding litigation.” Air Line Stewards, etc., Local 550 v. American Airlines, Inc., 455 F.2d 101, 109
(7th Cir. 1972.); Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 250–51, (2001); see also
Kuang Xuan Liu v. Win Woo Trading, LLC, No. 4:14-CV-02639-KAW, 2017 WL 4283947, at *2–3
(N.D. Cal. Sept. 27, 2017) (5% of PAGA penalties deemed adequate).

1 company's Colorado headquarters on California stores during the Class Period (prior to the time the
2 company moved to California in 2019) were applied to all of the non-exempt employees, including
3 managers.

4 24. Here, Chipotle has previously filed a Motion for Summary Judgment ("MSJ") with
5 regard to the PAGA Notice in this case. While Plaintiff disputes the allegations of inadequate notice,
6 Plaintiff discounts the recovery in this case to account for the possibility of Defendant prevailing on the
7 PAGA MSJ challenge.

8 25. **Other Class, Representative or Collective Actions That Assert Similar Claims:**

9 During the pendency of this action, I have searched court records, legal databases such as
10 Westlaw and made a reasonable inquiry of Defendant's counsel to determine whether there were aware
11 of any such similar actions. Based upon my research, I am aware of class, representative or collective
12 actions in other jurisdictions which allege claims similar to those alleged in this action on behalf of a
13 class or group of individuals who would be members of the class defined in this action. The following
14 class or PAGA actions present the same, similar or related issues to the instant matter:

- 15 1. Segovia v. Chipotle, Case No. BC489851 (LA County Superior Court).
- 16 2. Turner v. Chipotle, Case No. 1:14-cv-02612-JLK-CBS3 (United States District Court,
Colorado)(2014).
- 17 3. Porras v. Chipotle, No. CV-19-000937 (Stanislaus County Superior Court).
- 18 4. Le Sure, et al. v. Chipotle, No. 19STCV05589 (Los Angeles County Superior Court).
- 19 5. Sanchez v. Chipotle, No. CIVDS1910956 (San Bernardino) ("Sanchez")
- 20 6. Barber v. Chipotle, No. 20-2016-864261 (Orange County Superior Court).

21 26. The Porras, Le Sure and Sanchez cases were also settled at the Mediation with Jeff Krivis on
22 October 1, 2019. The Barber case is currently stayed after the Plaintiff's case was compelled to arbitration.
23 Further, the class definition in the proposed settlement excludes any potential Class Member who had a lawsuit or
24 arbitration as of August 1, 2020, so this settlement will not affect any of the other cases, including Barber, because
25 the Barber plaintiffs are excluded from the class. There are currently no other certified classes in any other case
26 against Chipotle in California.

27 27. In 2014, in Segovia v. Chipotle Mexican Grill, Inc., Los Angeles County Superior Court Case
28 No. BC489851, Plaintiff Wendy Segovia ("Segovia") and Chipotle Mexican Grill, Inc. ("CMG"), settled a class
action, in which Segovia had litigated against Chipotle Services, LLC, Defendant herein. In resolution, Segovia
and CMG the Superior Court certified the classes articulated in the Segovia Fifth Amended Complaint, consisting

1 “of all current and former employees classified by Defendant as non-exempt from overtime who worked at
2 Defendant’s restaurant in California during the period from August 8, 2008 to October 1, 2014.” In Segovia, the
3 court, finding proper notice had been provided to Chipotle Class Members entered final judgment for members of
4 the certified class including subclasses for violations, as also alleged in the instant case, of California Labor Code
5 sections 203, 226(a) and 226.7. **Therefore, the Class Period in this case begins on October 1, 2014.**

6 28. JeRae Porras, Mandi Sanchez, Kadiedra Crawford, Jason Le Sure, and Janie Salguero are the
7 named plaintiffs (“Plaintiffs”) in three separate PAGA actions brought against Defendant Chipotle Services, LLC
8 (“Defendant” or “Chipotle”) (collectively with Plaintiffs, the “Parties”) under the Labor Code Private Attorneys
9 General Act of 2004 (“PAGA”) for wage and hour violations: (1) *Porras v. Chipotle Services, LLC* No. CV-19-
10 000937 (Stanislaus County Superior Court) (“*Porras Action*”); (2) *Sanchez v. Chipotle Services*, No.
11 CIVDS1910956 (San Bernardino) (“*Sanchez Action*”) (collectively, the “Actions”); and (3) *Le Sure, et al. v.*
12 *Chipotle Services, LLC*, No. 19STCV05589 (Los Angeles County Superior Court) (“*Le Sure Action*”);

13 29. The Porras, Le Sure and Sanchez Actions allege overlapping Labor Code violations beginning in
14 September 18, 2018. Following a thorough investigation and evaluation of their respective claims and defenses,
15 the Parties participated in a joint mediation with Mr. Jeffrey Krivis, an experienced and respected mediator of
16 wage and hour actions. With Mr. Krivis’ assistance, the Parties were able to negotiate a global settlement of all
17 three PAGA actions (the “Porras Settlement”). The \$4.9 million settlement in Porras received final approval or
18 about June 15, 2020. Counsel herein are also counsel on the Le Sure case.

19 30. The *Barber* Action

20 As stated above, the Barber case is currently stayed after the Plaintiff’s case was compelled to arbitration.
21 Barber petition for writ of mandate was denied on November 14, 2019. Barber involves a proposed class of “All
22 current, former, or prospective *managers* of Defendants in the State of California who worked off-the-clock and
23 were not compensated properly for their time in violation of the California Labor Code and applicable wage
24 orders during any time between October 1, 2014 and the date of judgment. (“Plaintiff Class”).” Barber First
25 Amended Complaint, ¶27 (emphasis added). The Barber Plaintiff’s attempted to file a Second Amended
26 Complaint expanding their class definition to include non-managers, however, Chipotle filed a Motion to Strike.
27 The court ruled that Barber could not expand their class definition to include non-managers. The Barber case is
28 stayed pending arbitration, which could take up to a year or more. No class certification motion was ever even

1 filed in Barber, and the case will still be in early stages even if the case continues after the arbitration. The Barber
2 Plaintiffs were invited to the mediation, but declined to attend. Further, the class definition in the proposed
3 settlement excludes any potential Class Member who had a lawsuit or arbitration as of August 1, 2020, so this
4 settlement will not affect any represented plaintiffs in any of the other cases, including Barber, in any way. There
5 are currently no other certified classes in any other case against Chipotle in California.

6 **31. The Turner Action**

7 Turner is a Colorado Fair Labor Standards Act collective action case. A collective action notice was sent
8 to putative class members, who had the chance to opt in. Therefore, excluded from this Class are (1) any
9 California employees that have opted in to the currently pending Colorado federal district court case *Turner v.*
10 *Chipotle Mexican Grill, Inc., Case No. 1:14-cv-02612-JLK-CBS* (the “*Turner Action*”); (3) any Class Member
11 who has filed individual arbitrations related to the *Turner Action*; and (4) any Class Member who has a pending
12 arbitration or lawsuit against Chipotle as of the date hereof.

13 **32. Summary**

14 In short, the proposed settlement herein would not have any effect on Porras, Le Sure or Sanchez because
15 those cases have already been settled and the settlement has been approved in Stanislaus County Superior Court.
16 Any Class Member who opted in to Turner or filed an arbitration, or filed another lawsuit, is also excluded, so
17 approval of the Settlement does not appear to be any material conflict with the Colorado Turner federal case or
18 the Barber case.

19 **33. Fee Splitting Agreement**

20 Harris & Ruble and North Bay Law Group have jointly litigated this case since its filing. The
21 firms have a joint prosecution fee-split agreement in this case which Plaintiffs have consented to in
22 writing. The Parties and their counsel agreed to cooperate and make their best efforts to effectuate the
23 recovery of reasonable costs and fees in the event of the successful prosecution and/or settlement of the
24 underlying actions or any portion thereof. At that time and in that event, each of the parties’ counsel
25 would submit to the Court their costs and time sheets quantifying and describing the general nature of all
26 common benefit work performed by the respective law firm on behalf of the Plaintiffs in such action
27 and/or on behalf of the putative class. **This division of fees will not increase the fees paid by the**
28 **representative plaintiff or the class / aggrieved employees.**

1 34. The Agreement is made among Firms authorized to practice under the laws of the State
2 of California and is intended to be governed by the ethical rules of California. In the event that any
3 portion of the Agreement shall be held to be unenforceable, the remaining portions shall remain in force
4 and effect and to give effect to the overall intention of fostering cooperation among counsel to best serve
5 the interests of the clients. The Parties will coordinate their activities in connection with this joint
6 representation agreement and they will keep each other informed of all material developments and shall
7 share responsibility for oversight and the conduct of day-to-day activities in this litigation. The parties
8 will keep each other informed of all material developments in the case and any settlement negotiations.
9 Any disputes under this Agreement shall be submitted to the California Superior Court in the county in
10 which the respective action is pending and will be governed by the Laws of State of California. The
11 named Plaintiffs have approved the fee-splitting agreement in writing, pursuant to California Rule of
12 Professional Responsibility 1.5.1.

13 35. **Disposition of Uncashed Checks, Unpaid Cash Residue and Unclaimed Funds**

14 Class Members who do not affirmatively opt-out of the settlement will receive a pro-rata share of
15 the Net Settlement Amount based on pay periods worked during the Class Period. Because the parties
16 intend to provide as much relief as practicable to the Class Members, the parties will facilitate a second
17 distribution to Class Members who cashed their checks during the first round (the “Second
18 Distribution”) if the amount of uncashed first checks exceeds \$27,500.³⁵ Following the Second
19 Distribution, if any, any checks not cashed within 180 days of payment shall be paid to the *cy pres*
20 recipient, in accordance with CCP §384, subd. (b). The Court has indicated that it will consider the
21 proposed *cy pres* recipient at final approval.

22 36. Subject to court approval, all checks not cashed within 180 days of payment shall be paid
23 to the California pro bono law firm, Public Counsel, as the *cy pres* recipient, in accordance with Code of
24 Civil Procedure §384, subd. (b). Neither Plaintiffs nor Plaintiffs’ counsel is known to have any interest
25 or involvement in the governance of work of the proposed *cy pres* recipient Public Counsel. *The Court*
26 *will consider whether the proposed cy pres recipient is appropriate at final approval.*

27 37. Founded in 1970, Public Counsel is the public interest law firm of the Los Angeles
28

³⁵ This allows for \$6,500 mailing costs and checks of at least \$3 each to the Class Members.

1 County and Beverly Hills Bar Associations as well as the Southern California affiliate of the Lawyers'
2 Committee for Civil Rights Under Law. Public Counsel's activities are far-ranging and impact a wide
3 spectrum of people who live at or below the poverty level. Volunteer attorneys have the opportunity to
4 work on a variety of different projects-large and small, litigation and transactional matters. Our staff
5 provides training, model pleadings and forms and consultations to volunteers. Public Counsel has
6 received a 4-star rating from Charity Navigator, America's largest and most-utilized independent
7 evaluator of charities. Public Counsel has a staff of 71 attorneys and 50 support staff - including five
8 social workers - along with over 5,000 volunteer lawyers, law students and legal professionals assists
9 over 30,000 children, youth, families, and community organizations every year³⁶.

10 **38. Proposed Notice Package**

11 The proposed notice complies with requirements of the Court's CMO, and is in a form that is
12 likely to be readily understood by the members of the class. The form is likely to give actual notice to
13 the greatest number of class members. In addition to the mailed paper Notice, in **Spanish and English**,
14 the Claims Administrator will create a Google-searchable settlement website which contains copies of
15 all papers and orders filed in connection with preliminary and final approval, including the final
16 Settlement Agreement and Complaints, as well as any order denying approval of the Settlement. These
17 documents will be posted not later than the mailing of the Class Notice and will remain posted until the
18 date of final approval. A short form notice will also be emailed to all Class Members who have provided
19 an email, informing Class Members that they should be receiving the Class Notice Materials, informing
20 them how to correct their mailing address and directing them to the website where they may obtain the
21 Class Notice Materials.

22 39(a). The Claims Administrator will send each Settlement Class Member the Class Notice via
23 first-class United States mail. Direct mail notice to Settlement Class Members' last known address is
24 the best possible notice under the circumstances.

25 39(b). Pursuant to California Rules of Court, Rule 3.769(f), the class notice must contain
26 an explanation of the proposed settlement and procedures for class members to follow in filing written
27 objections to it and arranging to appear at the hearing and state objections to the proposed settlement.

28 ³⁶ See http://www.publiccounsel.org/about_us?id=0005 (access Jan. 20, 2020).

1 Cal. R. Ct. 3.769(f). Here, the Class Notice satisfies each of these requirements. The Class Notice also
2 meets each of the requirements set forth in California Rules of Court, Rule 3.766, as it includes (1) a brief
3 explanation of the case, including the basic contentions and denials of the parties and how to submit a
4 claims; (2) a statement that the court will exclude the Settlement Class Member from the class if the
5 member so requests by a specified date; (3) a procedure for the Settlement Class Member to follow in
6 requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind
7 all Settlement Class Member who do not request exclusion; and (5) a statement that any Settlement Class
8 Member who does not request exclusion may, if the member so desires, object or enter an appearance
9 through counsel.

10 39(c). Within fifteen (15) calendar days after Defendant provides the Claims
11 Administrator the class information, the Claims Administrator will mail, by first-class mail, the Class
12 Notice to all Class Members at their last known address, unless modified by any updated address
13 information that the Claims Administrator obtains in the course of administration of the Settlement. The
14 Claims Administrator will use standard devices, including the National Change of Address database or
15 equivalent, to obtain forwarding addresses **prior to mailing** and will use appropriate skip tracing to take
16 appropriate steps to maximize the probability that the Notice Materials will be received by all Class
17 Members. Class Members to whom the Class Notice is resent after having been returned undeliverable to
18 the Claims Administrator shall have ten (10) calendar days thereafter, or until the response deadline has
19 expired, whichever is later, to mail, fax or email the request for exclusion, or an objection. Class Notices
20 that are resent shall inform the recipient of this adjusted deadline. If a Class Member's Class Notice is
21 returned to the Claims Administrator more than once as non-deliverable, no additional Class Notice shall
22 be sent. Within thirty (30) calendar days after the Claims Administrator mails out the Class Notice, the
23 Claim Administrator will mail out mutually acceptable reminder postcards to Class Members reminding
24 them of their right to exclude themselves from the settlement, object to the settlement, or dispute the
25 Defendant's employment records used to determine the Class Members' Gross Individual Settlement
26 Payment.

27 39(d). The proposed Class Notice provides that Class Members who wish to exclude themselves
28 from the Class must submit to the Settlement Administrator the Request for Exclusion Form (as

1 approved) or a written statement requesting exclusion from the Class (also referred to herein as “Opt
2 Out”) no later than the Objection/Exclusion Deadline (as extended due to re-mailing). Such written
3 request for exclusion must contain the name, address, and telephone number of the person requesting
4 exclusion and the location and years of his or her employment by Chipotle, and must be returned by
5 mail to the Settlement Administrator at a specified address, and must be postmarked on or before the
6 Objection/Exclusion Deadline. Ex. 1, ¶ VII(A)(40-44).

7 39(e). Any Class Member who properly opts out of the Class using this procedure will not be
8 entitled to any payment from the Settlement and will not be bound by the Settlement or have any right to
9 object or appeal. Harris Decl. Ex. 1, ¶ 60. Class Members who fail to submit a valid and timely request
10 for exclusion on or before the Objection/Exclusion Deadline (as extended by re-mailing) shall be bound
11 by all terms of the Settlement and any Judgment entered in this Action if the Settlement is approved by
12 the Court, regardless of whether they ineffectively or untimely request exclusion from the Settlement. Id.

13 39(f). Any Settlement Class Member may object to this Settlement by mailing a Notice of
14 Objection provided in the Class Notice Package to the Settlement Administrator by no later than the last
15 day of the Exclusion Period (as extended). Alternatively, any Settlement Class Member may submit a
16 written objection to the Settlement Administrator which shall include the name, signature and address of
17 the objector, the name and number of the case, a statement of the basis for each objection asserted, and
18 whether such Settlement Class Member desires to appear and be heard at the final approval hearing. Id.

19 39(g). Class Members who do not affirmatively opt-out of the settlement will receive a pro-rata
20 share of the Net Amount based on pay periods worked during the Class Period. A “Correction” form
21 will be mailed to Class Members to utilize only if they dispute their pay periods. If the Settlement is
22 approved, a Final Judgment will be entered, and the Claims Administrator give notice by posting the
23 Final Judgment on its website. Ex. 1, ¶ VII(G)(53). The proposed Amended Notice Package is attached
24 hereto as **Exhibit 2**.

25 40. **Settlement Does Not Require Any Class Member to Submit Claims**

26 Class Members do not have to submit claims forms or take any action to participate.

27 41. **Released Claims**

28 If approved by the Court, the settlement will be binding on all final Settlement Class Members

1 who do not exclude themselves from the settlement and will bar them from bringing certain claims
2 against Chipotle, detailed below. The Released Claims include claims which could have been pled
3 based on or reasonably related to the facts and claims alleged in the Complaint, FAC, SAC, TAC or
4 arising out of or reasonably related to the transactions and occurrences pled in the Complaint, FAC,
5 SAC, or TAC. Ex. 1, ¶ X(A)(61). As of the date the Final Approval Order is entered by the Court and
6 except as to such rights or claims as may be created by this Settlement, to the maximum extent allowed
7 by law, each Class Member who has not timely and effectively opted out will be deemed to have
8 released claims as both a matter of contract and judicial procedure as follows, which release shall be
9 incorporated into the Notice:

10 Once the settlement is finalized, all Class Members who have not submitted timely and
11 valid Exclusion Letters will release and discharge Defendant, their past or present
12 officers, directors, shareholders, employees, agents, principals, heirs, representatives,
13 accountants, auditors, consultants, insurers and reinsurers, and their respective successors
14 and predecessors in interest, subsidiaries, affiliates, parents and attorneys (the “Released
15 Parties”) from all claims, demands, rights, liabilities and causes of action that were or
16 could have been asserted (whether in tort, contract or otherwise) for violation of the
17 California Labor Code, the California Business and Professions Code, the applicable
18 Industrial Welfare Commission Orders or any similar state or federal law, whether for
19 economic damages, non-economic damages, liquidated damages, punitive damages,
20 restitution, penalties, other monies, or other relief based on any facts, transactions, events,
21 policies, occurrences, acts, disclosures, statements, omissions or failures to act pled or
22 arising out of or reasonably related to the facts, transactions, and occurrences pled in the
23 Complaint, the First Amended Complaint, or Second Amended Complaint, or Third
24 Amended Complaint which are or could be the basis of claims for: (1) unpaid wages; (2)
25 unpaid minimum wages; (3) unpaid or underpaid overtime wages; (4) failure to provide
26 meal periods and claims regarding meal period premium pay; (5) failure to provide rest
27 periods and claims regarding rest period premium pay; (6) failure to reimburse expenses;
28 (7) failure to provide accurate wage statements; (8) failure to timely pay wages upon
termination and during employment; (9) claims for unfair competition arising from the
facts alleged in the operative complaints; and (10) related claims for penalties pursuant to
the Labor Code Private Attorneys General Act of 2004 (“PAGA) for California Labor
Code sections 201, 202, and 203 (collectively, the “Released Claims”). The release will
exclude claims for vested benefits, wrongful termination (apart from that of Plaintiff
Turley and any other named Plaintiff who will execute general releases of claims under
Civil Code section 1542), unemployment insurance, disability, workers’ compensation,
and claims outside of the Class Period. The Gross Individual Settlement Payment to
Participating Class Members will not result in any additional benefit payments beyond
those provided by this Agreement to Plaintiff and Participating Class Members.
Participating Class Members will be deemed to have waived all such claims for benefits
premised upon the Gross Individual Settlement Payments to them, whether known or
unknown by them, as part of their Released Claims under this Agreement.

Ex. 1, ¶ X(A)(62-63).

1 42. **Class Representative Release.** As of the date the Final Approval Order is entered by the
2 Court and except as to such rights or claims as may be created by this Settlement, to the maximum
3 extent allowed by law, the Class Representatives will be deemed to have released claims as follows:

4 The Class Representative hereby fully and finally releases and discharges the Released
5 Parties (defined in Paragraph 63, above) from any and all of the Released Claims (defined
6 in Paragraph 63, above) and from any and all claims, charges, complaints, liens, demands,
7 causes of action, obligations, damages and liabilities, known or unknown, suspected or
8 unsuspected, that the Class Representative had, now has, or may hereafter claim to have
9 against the Released Parties arising out of, or relating in any way to, the Class
10 Representative's hiring by, employment with, separation of employment with, or otherwise
11 relating to the Released Parties, arising or accruing from the beginning of time up through
12 the date of the Final Approval Hearing ("Class Representative's Released Period") with the
13 exception of any other claims which cannot be released by law.

14 Ex. 1, ¶ X(A)(62-64)("Class Representative's Released Claims"). With respect to the Class
15 Representative's Released Claims only, upon the Effective Date, the Class Representative is also subject
16 to a waiver under California Civil Code Section 1542, which provides:

17 A general release does not extend to claims that the creditor or releasing
18 party does not know or suspect to exist in his or her favor at the time of
19 executing the release and that, if known by him or her, would have
20 materially affected his or her settlement with the debtor or released party.

21 43. **Claims Administrator**

22 The parties have received bids from several claims administrators and submit Phoenix as the
23 proposed claims administrator to be approved by this Court. The Phoenix bid is capped at \$49,500. A
24 true and correct copy of the Revised Claims Administration bid is attached hereto at **Exhibit 4**. The
25 duties of the proposed claims administrator are described in the Settlement. Phoenix has previously
26 administered the distribution of a Belaire-West Notice for Chipotle in this case, and is familiar with the
27 Chipotle data exchange procedures with respect to Chipotle.

28 44. **Applicable Payroll Taxes**

 The allocation of payment of claims between the class members and tax treatment of such claims
shall be 25% wages, 25% interest, and 50% penalties. The allocation of payment of claims was
determined based upon the estimated allocation of the claims released. Because the class was certified
for the wage statement portion, the parties gave a 50% weight to penalties to take into account the
potential penalties being released under Labor Code Section 226. Because uncertified wage claims such
as Section 203 (Continuing Wages), Meal Breaks (Section 226.7) and Rest Breaks (Section 226.7) were

1 also being released, the parties assigned 25% of the payments as wages. The final 25% was allocated
2 for the UCL being released, which could provide the Class Member with interest based upon an amount
3 allegedly unlawfully withheld from an employee's wages.

4 44(a). The Claims Administrator will send the W-2's, 1099's and other tax documents to Class
5 Members and Class Representatives.³⁷

6 ***Proposed attorney fee and costs***

7 45. The requested attorney fee percentage is in the typical range of that charged by Class
8 Counsel for other employment cases. The Court should also consider that the efforts of Class Counsel
9 have resulted in substantial benefits to the Settlement Class Members in the form of a significant
10 settlement fund established to compensate Settlement Class Members for the alleged wage-and-hour
11 violations. Without the efforts of Class Counsel, the claims alleged in the Complaints would likely have
12 gone without remedy, at all. Additionally, Class Counsel has invested significant time and resources in
13 this case, with payment deferred to the end of the litigation and entirely contingent on the outcome. The
14 requested attorney fee percentage is comparable to that charged by Counsel for other employment cases.
15 The Court should also consider that the efforts of Counsel have resulted in substantial benefits to the
16 Aggrieved Employees in the form of a significant settlement fund established to compensate Aggrieved
17 Employees for the alleged wage-and-hour violations. Without the efforts of Plaintiffs' Counsel, the
18 claims alleged in the complaint would likely have gone without remedy. Additionally, Plaintiffs'
19 Counsel has invested significant time and resources in this case, with payment deferred to the end of the
20 litigation and entirely contingent on the outcome. I am familiar with the contingent fee market
21 throughout California, particularly as it pertains to complex employment, wage and hour, class action,
22 and PAGA litigation. During this litigation, my Co-Counsel and this firm have litigated this case without
23 receiving any payment for their services or reimbursement of their costs incurred for the benefit of the

24 ³⁷ "The Claims Administrator will timely remit any taxes associated with the settlement payments to
25 the proper authorities, as required by law. In addition, the Claims Administrator will timely prepare and
26 issue an IRS Form 1099-MISC and/or W-2 Form as appropriate to each Participating Class Member to
27 the extent required by law. Settlement, ¶ IX(58); "IRS Forms 1099 and W2 (and any equivalent
28 California form) will be distributed to the final Settlement Class Members (those who have not excluded
themselves) reflecting the payments they receive under the settlement. Interest and penalties shall be
reported as such (Form 1099 reporting) to the taxing authorities." Notice, ¶18(c); "The Claims
Administrator will issue IRS Form 1099-MISC to Plaintiff for the amount of the Class Representative
Payment." Settlement, ¶ V(D)(29).

1 state of California and the aggrieved employees. Of course, the final amount to be sought won't be
2 determined until the final value of the Voucher payments is determined. An award of contingent
3 attorney's fees to counsel is justified under the "common fund" doctrine. Serrano v. Priest, 20 Cal. 3d
4 25, 34 (1977). An attorney who recovers a common fund for the benefit of persons other than his or her
5 clients is entitled to a fee from the common fund. Mills v. Electric Auto-Lite Co., 396 U.S. 375, 392–96
6 (1970). It is well-established that the "experienced trial judge is the best judge of the value of
7 professional services rendered in [the] court" Serrano, 20 Cal. 3d at 49. Both state and federal
8 courts in California have embraced this doctrine. Serrano, 20 Cal. 3d at 35; See Vasquez v. Coast
9 Valley Roofing, 266 F.R.D. 482 (E.D. Cal.2010) (in wage-and-hour action class-action an award of **33.3**
10 **percent** appropriate); See also In re Activision Sec. Litig., 723 F. Supp. 1373, 1377–78 (N.D. Cal. 1989)
11 ("nearly all common fund awards range around **30%**"); Betancourt v. Advantage Human Resourcing,
12 Inc., No. 14-CV-01788-JST, 2016 WL 344532, at *9 (N.D. Cal. Jan. 28, 2016) (**34.3%** of common fund
13 "fair and reasonable"); Deaver v. Compass Bank, No. 13-CV-00222-JSC, 2015 WL 8526982, at *11
14 (N.D. Cal. Dec. 11, 2015) (**33%**); Boyd v. Bank of Am. Corp., No. SACV 13-0561-DOC, 2014 WL
15 6473804, at *12 (C.D. Cal. Nov. 18, 2014) (**33.3%**); Fernandez v. Victoria Secret Stores, LLC, No. CV
16 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (**34%** award is "fair and
17 reasonable"); Stuart v. Radioshack Corp., No. C-07-4499 EMC, 2010 WL 3155645, at *6 (N.D. Cal.
18 Aug. 9, 2010) (**33.3%**).³⁸

19 46. In the present case, the facts supporting payment of fees by the beneficiaries of the
20 common fund are satisfied. Under the doctrine, courts have historically and consistently recognized that
21 class litigation is increasingly necessary to protect the rights of individuals whose injuries and/or
22 damages are too small to economically justify individual representation. In Paul, Johnson, Alston &
23 Hunt v. Graulty, 886 F. 2d 268, 271 (9th Cir. 1989), the Ninth Circuit stated that "it is well settled that
24 the lawyer who creates a common fund is allowed an extra reward, beyond that which he has arranged
25

26 ³⁸ See also Chavez v. Petrissans, Case No. 1:08-cv-00122 LJO GSA, Doc. No. 89 (E.D.Cal. Dec.
27 15, 2009) (awarding of attorneys' fees of 33.3 percent of the common fund); Romero v. Producers Dairy
28 Foods, Inc., No. 1:05-cv-0484-DLB, 2007 WL 3492841, at * 4 (E.D. Cal. Nov.14, 2007) (in a class-
action settlement attorneys' fees in the amount of 33 percent of common fund were warranted); Bond v.
Ferguson Enterprises, Inc., No. 1:09-cv-01662-OWW-MJS, 2011 WL 2648879, at *11 (E.D. Cal. June
30, 2011) (approving attorneys' fees in the amount of 30 percent of the common fund).

1 with his client.” Paul, Johnson, Alston & Hunt v. Grauly, 886 F. 2d at 271. Class Counsel spent a
2 reasonable number of hours for the work required in this matter, and all of them should be considered in
3 computing the lodestar award. Professional time reasonably and necessarily expended in securing an
4 award of attorney’s fees is subject to reimbursement. Serrano IV, 32 Cal. 3d 621, 624 (1982).

5 47. On behalf of my firm, I have negotiated numerous contingency fee agreements with
6 plaintiffs, both as individuals and as representatives in class action and PAGA suits. Many of those
7 agreements provided that counsel will receive a fee that is between 33.33% and 40% of any recovery
8 that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred out of the
9 recovery amount. There are always risks attendant to billing cases on a contingency basis. It is not a
10 foregone conclusion that every case taken on a contingency fee basis will result in a recovery or that the
11 attorneys’ fees recovered will actually compensate my firm for the amount of time expended in an
12 action. Moreover, even when successful, a class action contingency law firm may only receive a small
13 percentage of the amount of attorneys’ fees incurred during the prosecution of a case. Where plaintiffs’
14 counsel does succeed, therefore, it is appropriate to compensate the firm for the risks the firm regularly
15 undertakes. There is also always the possibility that the Plaintiff will not prevail and Class Counsel will
16 not receive any compensation for its services and/or that the Defendant will declare bankruptcy or lack
17 the assets necessary to satisfy any judgment obtained against it. Neither Harris & Ruble nor North Bay
18 Law Group has been paid any money for attorneys’ fees in this case. My firm has also advanced of all
19 the costs associated with the case, currently estimated to be approximately \$25,000.

20 ***Proposed enhancement award and Individual Settlements***

21 48. The requested \$2,500 class representative enhancement fee to Plaintiff is reasonable
22 given: (1) the substantial time and effort Plaintiff has expended on behalf of the Settlement Class; (2) the
23 risks Plaintiff faces as a result of bringing this action; (3) the fact that Plaintiff put the interests of the
24 class ahead of her own; and (4) the substantial benefit conferred upon the Settlement Class as result of
25 Plaintiff’s Action. Plaintiff is giving a full release of all potential claims against Chipotle, including a
26 1542 waiver. Ex. 1, ¶ I(r); X(B)(69).

27 49. Plaintiff Turley has taken an active part in this litigation since early, 2015, conferring
28 with counsel and assisting in gathering information for the prosecution of the lawsuit. Turley aided in

1 the preparation of the initial complaint, amended complaints and proposed settlements. Turley has spent
2 considerable time providing factual background and consulting with Counsel in connection with a full-
3 day mediation. Turley was subjected to a full-day deposition. *See* Declaration of Tanika Turley
4 (“Turley Decl.”), ¶¶3-8.

5 50. Plaintiff Thompson was added as a plaintiff in the TAC after the death of Plaintiff
6 Carrithers. Plaintiff Thompson is not a proposed class representative. Thompson will sign an individual
7 settlement with a general release for \$2,500, to be paid with funds outside the Settlement, if approved by
8 the Court.

9 51. Turley’s work experience at Chipotle was typical of other hourly, non-exempt
10 employees. Turley worked at Chipotle from May 8, 2014, beginning date of the Class Period through
11 January 15, 2015 (8 months, 8 days or 36 weeks) which is in line with the average time that workers are
12 employed. Like other fast food restaurants, Chipotle employees many transient, part-time and/or short-
13 term workers. Many Chipotle employees attend school or have other jobs. Plaintiff’s counsel
14 interviewed Chipotle employees who worked part-time in order to get the benefits, such as paid meal
15 breaks (free Chipotle meal per shift), free English as a second language class for employees and family
16 members, tuition reimbursement up to \$5,250 a year, annual crew bonus, and dental vision and medical
17 insurance options.³⁹ Per data provided by Defendant, over **38%** of the individuals in the proposed Class
18 (roughly 29,000 employees) in this case worked **12 weeks or fewer**. About **17%** of the individuals in
19 the proposed Class (roughly 13,000 employees) worked a month or less. The average tenure of
20 members of the Class was 48 weeks. Turley is a member of the class she seeks to represent. *See*
21 Watkins v. Wachovia Corp., 172 Cal.App.4th 1576 (2009), review denied. She is similarly situated to
22 the other class members and united by a common interest. CashCall, Inc. v. Superior Court, 71
23 Cal.Rptr.3d 441 (2008), review denied. Here, Turley was subject to the uniform policies and procedures
24 of Chipotle regarding meal breaks, rest breaks, hourly wages, and wage statements. Her length of
25 employment was comparable to the vast majority other class members (over 90% of the Class Members
26 are former employees). She understands that he has a fiduciary responsibility to the class, regardless of
27

28 ³⁹ See <https://www.workitdaily.com/chipotle-serves-up-extra-pay> Chipotle Serves Up Extra Month
Of Pay With New Employee Benefit (accessed February 22, 2020.)

1 whether the Court awards her an enhancement award. *See* Turley Declaration, generally.

2 ***Qualifications of Proposed Class Counsel***

3 52. **Experience.** I have been and am licensed as an attorney, first in Illinois (1974) and later
4 in California (1989). I am a *summa cum laude* graduate of the University of Illinois (A.B. 1970; J.D.
5 1974). After graduation from law school in January 1974, I was hired as a litigation associate at a
6 plaintiffs' class action antitrust boutique in Chicago, Illinois: Freeman, Freeman & Salzman.^[1] I
7 became a partner in that firm in 1980, and I started my own practice in 1982. I speak before
8 professional organizations on topics of interest to the Bar. I have represented Plaintiff in complex
9 business litigation for over forty-three years. E.g., Illinois v. Ill. Brick Co., Inc., 431 U.S. 720 (1977); In
10 re My Left Hook, LLC, 129 Fed. Appx. 352 (9th Cir. 2005); Gregory v. SCIE, LLC, 317 F.3d 1050 (9th
11 Cir. 2003); In re Blue Coal Corp., 986 F.2d 687 (3d Cir. 1993); In re Blue Coal Corp., 206 B.R. 730
12 (M.D. Pa. 1997); U.S. v. Gleneagles Inv. Co., Inc., 584 F. Supp. 671, 689 (M.D. Pa. 1984), aff'd. in part
13 and vacated in part, and remanded sub. nom., U.S. v. Tabor Ct. Realty Corp. 803 F.2d 1288 (3d Cir.
14 1986), Certification den. sub. nom., McClellan Realty Co. v. U.S. 483 U.S. 1005 (1987); In re Uranium
15 Antitrust Litig., 503 F. Supp. 33 (N.D. Ill. 1981); In re Grand Jury, 469 F. Supp. 666 (M.D. Pa. 1980); In
16 re Anthracite Coal Antitrust Litig., 82 F.R.D. 364 (M.D. Pa. 1979), In re Folding Carton Antitrust Litig.,
17 83 F.R.D. 251 (N.D. Ill. 1978); In re Anthracite Coal Antitrust Litig., 78 F.R.D. 709 (M.D. Pa. 1978); In
18 re Master key Antitrust Litig., 1977 U.S. Dist. LEXIS 12948 (D. Conn. 1977) (six week jury trial for
19 plaintiffs); A. Cherney Disposal Co. v. Chicago & Suburban Refuse Disposal Corp., 68 F.R.D. 383
20 (N.D. Ill. 1975); In re Cement-Concrete Block, Chicago Area, Grand Jury Proceedings, 381 F. Supp.
21 1108 (N.D. Ill. 1974); Parment v. Lapin, 2004 WL 1194133 (June 1, 2004); Stetson v. West Publ'g Corp.,
22 457 Fed.Appx. 705 (9th Cir. Nov. 7, 2011); Covillo v. Specialty's Café, 2012 WL 3537058 (N.D. Cal.
23 Aug. 14, 2012). I have represented Plaintiff in class action trials and, once, a class action bench trial for
24 a defendant, Allstate Insurance Company. I have represented employees in numerous disputes
25 concerning their receipt of pay in connection with their employment, both before the State of California

26 _____
27 ^[1] Of my still-living partners in Freeman, Freeman & Salzman, a firm that dissolved in 2007, each
28 became associated with a leading national law firm. Lee Freeman, Jr. became the Chair of the Antitrust
Litigation Practice at Jenner & Block. Jerrold Salzman is of counsel at Skadden, Arps, Slate, Meagher
& Flom. Tyrone Fahner is a partner at Mayer Brown, having served as its co-Chairman from 1998 to
2001 and its Chairman from 2001 to 2007.

1 Division of Labor Standards Enforcement and in state and federal courts in California. E.g., Jacobs v.
2 CSAA Inter Ins. Bureau, 2009 U.S. Dist. LEXIS 37153 (N.D. Cal. May 1, 2009); Escobar v. Whiteside
3 Constr. Corp., 2008 U.S. Dist. LEXIS 68439 (N.D. Cal. 2008) (certification of collective action);
4 Tremblay v. Chevron Stations, Inc., 2008 Westlaw 2020514 (N.D. Cal. 2008) (certification of collective
5 action); Perez v. Maid Brigade, Inc., 2007 U.S. Dist. LEXIS 78412 (N.D. Cal. 2007) (denial of
6 employer’s effort to enforce arbitration clause in employment agreements); Hoffman v. Uncle P Prods.,
7 2008 Cal. App. Unpub. LEXIS 3609 (three-year statute of limitations applies to section 203 claims for
8 continuing wages); Bithell v. E.P. Mgmt. Servs., LP, 2007 Westlaw 4216854 (Cal. Ct. App. 2007)
9 (sustaining class settlement of entertainment-industry employees for section 203 and 226 claims against
10 entertainment-industry “payroll companies” and studios); DuPont v. Avalon Hollywood Servs., Inc.,
11 2007 Westlaw 93386 (Cal. App. 2007); Gregory v. Superior Court, 2004 Westlaw 2786357 (Cal. Ct.
12 App. 2004) (employee of entertainment-industry “payroll company” not subject to arbitration of dispute
13 under collective-bargaining agreement), and; Zabounian v. Hack Partners, LLC, Los Angeles Superior
14 Court Case No. BC 343449 (bench trial resulting in \$600,000 judgment on behalf of 89 class members
15 in certified California Labor Code and FLSA action). The undersigned has also been appointed lead
16 class counsel in many settled class actions. E.g., Kang v. Albertson’s, Inc., C.D. Cal. Case No. 2:07-
17 CV-00894-CAS-FFM (\$6,637,500 settlement of labor-law claims); Tremblay v. Chevron Stations, Inc.,
18 N.D. Cal. Case No. CV 07-6009 EDL (\$4,500,000 settlement of labor-law claims); Doty v. Costco
19 Wholesale Corp., C.D. Cal. Case No. CV 05-3241 FMC (JWJx) (\$7,500,000 distributed to class
20 members for FLSA and California Labor Code section 203 and 226 violations); Agatep v. Exxon Mobil
21 Corp., C.D. Cal. Case No. CV 05-2342 GAF (\$1,500,000 settlement on behalf of service-station
22 employees in California); Alfano v. Int’l Coffee & Tea, LLC, C.D. Cal. Case No. CV 04-8996 SVW
23 (CWx) (FLSA and California Labor Code section 226, 510, and 1194 case); Jenne v. On Stage Audio
24 Corp., C.D. Cal. Case No. CV 04-2045 CAS (PJWx) (FLSA and California Labor Code section 203
25 violations); Hansen v. Advanced Tech Security Servs., Inc., Los Angeles Superior Court Case No BC
26 367175 (\$1,050,000 settlement of labor-law claims); Ross v. Human Resources, Inc., Los Angeles
27 Superior Court Case No. BC 351506 (California Labor Code section 203 case); Harrington v. Manpay,
28 LLC, Los Angeles Superior Court Case No. BC 312171 (\$1,000,000 distributed to class members in a

1 section 510 and section 1194 case); Brackett v. Saatchi & Saatchi, Los Angeles Superior Court Case No.
2 BC 298728 (over \$170,000 distributed to class members in an FLSA and section 203 case); Readmond
3 v. Straw Dogs, Inc., Los Angeles Superior Court Case No. BC257394 (over \$100,000 distributed to
4 class members in a section 203 case); Greenberg v. EP Mgmt. Servs., LP, Los Angeles Superior Court
5 Case No. BC 237787 (\$5,348,000 settlement of claims under sections 203 and 226 of California Labor
6 Code); Angel Paws, Inc. v. Avalon Payroll Servs., Inc., Los Angeles Superior Court Case No. BC
7 188982 (over \$450,000 distributed to class members in a section 203 case); Saunders v. Metro Image
8 Group, San Diego Superior Court Case No. GIC 809753 (California Labor Code section 203 case);
9 Stratford v. Citicorp West FSB, Monterey Superior Court Case No. M 81026 (\$950,000 settlement of
10 labor-law claims); Deckard v. Banco Popular N. Am., related to Silva v. Banco Popular N. Am., C.D.
11 Cal. Case No. CV 08-6709 JFW (RZx) (\$1,050,000 settlement of California Labor Code and FLSA
12 claims); Wingate v. The Production Farm, LLC, C.D. Cal. No. CV 07-04294 (2009 settlement of FLSA
13 and Cal Lab Code 203, 212, 226 and 1194 case); Dizon v. Ito, Inc., N.D. Cal. Case No. 3:10-CV-00239-
14 JSW (\$2,451,000 settlement of California Labor Code and FLSA claims); Randolph v. Chipotle, Inc.,
15 Riverside County Superior Court Case No. INC 90412 (\$545,000 settlement of labor-law claims);
16 Seielstad v. Aegis Senior Cmtys., LLC, Northern District of California Case No. 09-01797 MMC
17 (\$1,000,000 settlement of labor claims); Rentoria v. Omnicare, Los Angeles Superior Court Case No.
18 BC405988 (\$755,000 settlement of labor-law claims); and Peralta v. Macerich Management Company,
19 Marin County Superior Court Case No. CIV 1004656 (\$2,200,000 settlement of California Labor Code
20 claims). Grimm v. Am. Eagle Airlines, Inc., No. LACV1100406JAKMANX, 2015 WL 13627824, at *2
21 (C.D. Cal. Mar. 2, 2015)(approving a \$400,000 settlement of class consisting “of all current and former
22 employees of Defendant [some 1,078 persons] employed in the State of California who worked in one or
23 more covered positions from September 21, 2006 through September 29, 2014.”). The majority of the
24 foregoing cases were undertaken on a contingent-fee basis, and Harris & Ruble has sufficient financial
25 resources to engage in that sort of practice.

26 53. Over the past twenty years, I have researched and argued claims such as those at issue in
27 this case, i.e., non-payment of overtime under California law, failure to provide rest and meal breaks,
28 “continuing wages” under section 203 of the California Labor Code, and liquidated damages under

1 section 226 of the California Labor Code. E.g. Greenberg v. EP Management Services, LP, Los Angeles
2 Superior Court Case No. BC 237787, filed October 2, 2000; Kang v. Albertson's, Inc., United States
3 District Court for the Central District of California Case No. 2:07-CV-00894-CAS-FFM, filed
4 November 21, 2006; Hansen v. Advanced Tech Security Services, Inc., Los Angeles Superior Court,
5 Case No BC 367175. The following highly-experienced attorney assisted in the litigation and settlement
6 of this case.

7 54. **David Harris** is the founding attorney of the North Bay Law Group in Mill Valley,
8 California. Mr. Harris is a graduate of the University of Colorado, Boulder (BS 1994) and the
9 University of San Francisco School of Law (JD 2001), and a member of the California bar (December 3,
10 2001). Upon graduating from the University of San Francisco, School of Law, Mr. Harris joined the
11 litigation group in the Palo Alto office of Brobeck, Phleger & Harrison LLP, where he worked from
12 October 2001 through February 2003. Thereafter, Mr. Harris joined the litigation group in the San
13 Francisco office of Morgan Lewis & Bockius LLP, where he worked from February 2003 through July
14 2006. Thereafter, Mr. Harris founded the North Bay Law Group, where he has worked for the past
15 thirteen years. Mr. Harris has extensive experience litigating class actions. Mr. Harris has represented
16 employees in numerous disputes concerning their receipt of pay in connection with their employment,
17 both in state and federal courts in California. E.g., Covillo v. Specialty's Café & Bakery, Inc., 2012
18 U.S. Dist. LEXIS 114602 (N.D. Cal. 2012) (denial of employer's attempt to enforce arbitration clause in
19 employment agreements); Escobar v. Whiteside Constr. Corp., 2008 U.S. Dist. LEXIS 68439 (N.D. Cal.
20 2008) (certification of collective action); Tremblay v. Chevron Stations, Inc., 2008 Westlaw 2020514
21 (N.D. Cal. 2008) (certification of collective action); Perez v. Maid Brigade, Inc., 2007 U.S.
22 Dist. LEXIS 78412 (N.D. Cal. 2007) (denial of employer's effort to enforce arbitration clause in
23 employment agreements). Mr. Harris has also litigated and settled many class actions. E.g., Jacobs v.
24 CSAA Inter Insurance Bureau, N. D. Cal. Case No. 3:07-CV-00362-MHP (\$1,500,000 settlement of
25 labor-law claims); Tremblay v. Chevron Stations, Inc., N.D. Cal. Case No. CV 07-6009 EDL (settlement
26 of labor-law claims); Dizon v. Ito, Incorporated, N.D. Cal. Case No. 3:10-CV-00239-JSW (settlement of
27 California Labor Code and FLSA claims); In Re Paypal Litigation, N.D. Cal. Case No..5:02-CV-01227-
28 JF (defense and settlement of class action lawsuit alleging violations of the Electronic Funds Transfer

1 Act); Bernardino v. Macerich Management Co., Marin Superior Court Case No. CIV-1004645 (class
2 action settlement of labor law claims); Jacobs v. Institute of Reading Dev., Inc., N.D. Cal. Case No. 10-
3 CV-00574-JCS (settlement of California Labor Code and FLSA claims); Seielstad et al. v. Aegis Senior
4 Communities, LLC, N.D. Cal. Case No. CV-09-1797 MMC (settlement of labor-law wage and hour
5 class action); Escobar v. Whiteside Construction Corp., N.D. Cal. Case No. CV-08-1120-WHA (class
6 action settlement of labor-law claims); Wade v. Minatta Transportation Co., N.D. Cal. Case No. CV-10-
7 02796-BZ (settlement of class action wage and hour labor law claims); Perez v. Maid Brigade, Inc.,
8 N.D. Cal. Case No. 3:07-CV-03473-SI (class action settlement of labor-law claims); Blandino v. MCM
9 Construction, Inc., N.D. Cal. Case No. 12-01729-WHO (class action settlement of labor law claims);
10 Covillo et al. v. Specialty's Café and Bakery, Inc., N.D. Cal. Case No. 11-CV-00594-DMR (class action
11 settlement of wage and hour labor law claims); Douglas v. Arcadia Health Services, Inc., N.D. Cal. Case
12 No. CV-11-3552 (class action settlement of labor law claims); Thio et al. v. Genji LLC et al., N.D. Cal.
13 Case No. 12-CV-05756 (class action settlement of labor law claims); O'Sullivan v. AMN Services, Inc.,
14 N.D. Cal. Case No. 3:12-cv-02125-JCS (class action settlement regarding denial of breaks and failure to
15 reimburse business expenses); Page v. Grand Home Holdings, Inc., N.D. Cal. Case No. 13-CV-02754-
16 NC (class action settlement of labor law claims); Veurink et al. v Beverly Health and Rehabilitation
17 Services Inc. et al., Sonoma County Superior Court No. SCV 255496 (class action settlement of wage
18 and hour claims); Lounibos v. Keypoint Government Solutions, Inc., N.D. Cal. Case No. 12-CV-0636
19 (JST) (class action settlement of wage and hour claims); McQueen et al. v Odd Fellows Home of
20 California, Napa County Superior Court Case No. C-26-64176 (class action settlement of wage and hour
21 claims); Castillo v. ADT LLC, E.D. Cal. Case No. 2:15-cv-00383-WBS (class action settlement of wage
22 and hour claims); Osorio et al. v Ghiringhelli Specialty Foods, Inc., Solano County Superior Court Case
23 No. FCS040751 (class action settlement of wage and hour claims).

24 55. **David Garrett** is a senior associate at Harris & Ruble. Mr. Garrett is a graduate of
25 Southern Methodist University (B.A., 1990) and the UCLA School of Law (J.D., 1992). He became a
26 member of the California bar in 1992, and is also a member of the Texas bar. Mr. Garrett has worked
27 with me on numerous class-action matters, and has been appointed class counsel in a number of them,
28 e.g. Sherman v. CLP Resources, Inc., Central District of California Case No. Case No. CV 12-8080

1 GW (PLAx) consolidated with Case No. CV 12-8080 GW (PLAx); Chookey v. Sears, Central District of
2 California Case No. CV 12-2491-GW (MRWx); Irrgang v. BHC Films, Inc., Los Angeles Superior
3 Court Case No. BC543984; Nall v. Diamond Supply, Los Angeles Superior Court Case No. BC527457;
4 Gonzalez v. Thyssenkrupp, Los Angeles Superior Court Case No. BC568761; Alvarenga v. Insperty,
5 Los Angeles Superior Court Case No. BC529803; Cociu v. David Yurman Retail, LLC., Los Angeles
6 Superior Court Case No. BC604385; Turley v. Chipotle, San Francisco Superior Court Case No. CGC-
7 15-544936; Petrosian v. Turn Around Communications, Inc., Los Angeles Superior Court Case No.
8 18STCV09026; Ramos v. Steele Water Cable, Inc., Los Angeles Superior Court Case No. BC694818;
9 Stephen v. PSC Industrial Outsourcing, Inc., Los Angeles Superior Court Case No. BC710752;
10 Altamirano v. Chipotle, Alameda County Superior Court, Case No. CGC-15-544936. He has
11 represented employees in numerous labor-law disputes while at Harris & Ruble. E.g., Sandling v.
12 Seraphim Films, Inc., Los Angeles Superior Court Case No. BC 537787; Graham v. Triumphant Films,
13 Inc., Los Angeles Superior Court Case No. BC 539767; Wong v. Weatherford, Alameda Superior Court
14 Case No. RG 12626790; Perryment v. Sky Chefs, Northern District of California Case No. 3:16-cv-
15 04015-JD; Aravelo v. XPO Logistics, Inc., Los Angeles Superior Court Case No. BC529813; Natale v.
16 Topanga Productions, Inc., Los Angeles Superior Court Case No. BC599970; Price v. Autozone, Inc.,
17 United States District Court Case No. 2:15-CV-076622 (C.D. Cal.); Osorio v. AWGE LLC, United
18 States District Court Case No. 2:18-CV-01092 (C.D. Cal.). David Garrett has been approved as class
19 counsel in numerous state and federal class action matters, e.g. Arrieta v. Superstation, Inc., Los Angeles
20 Superior Court Case No. BC676302; Dye v. Radford Studios, Inc., Los Angeles Superior Court Case
21 No. BC663326; Luviano v. Multi Cable, Inc., United States District Court Case No. 2:15-CV-05592
22 (C.D. Cal.); Roach v. Red Bull Distribution, Inc., Los Angeles Superior Court Case No. BC663866;
23 Crawford v. Sears Hometown and Outlet Store, Inc., SAN FRANCISCO Superior Court Case No.
24 RIC1510091; Kleronomos v. E&S Ring Management Corp., Los Angeles Superior Court Case No.
25 BC625143; Dye v. Radford Studios, Inc., Los Angeles Superior Court Case No. BC663326; Wigersma
26 v. Motion Theory, Inc., Los Angeles Superior Court Case No. BC531180.

27 56. **Priya Mohan** is an attorney at my firm who worked on the above-captioned matter. She
28 is a *magna cum laude* graduate of the University of Michigan (B.A., 2000) and the USC Gould School

1 of Law (J.D., 2003). She became a member of the California bar in 2003. Ms. Mohan has worked with
2 me in a number of labor-law disputes at Harris & Ruble and has been appointed class counsel in a
3 number of them. E.g. Clarke v. Indelible Media Corp., United States District Court Case No. CV10-
4 6230; Lobato v. Abbott Cardiovascular Systems, Inc., Santa Clara Superior Court Case No.
5 110CV175637; Matheny v. CA Payroll, Inc., United States District Court Case No. 2:11-CV-02522;
6 Chorley v. Palm Productions, Los Angeles Superior Court Case No. BC465045; Popko v. Van Acker
7 Construction Associates, Inc., United States District Court Case No. CV114034; Rentoria v. Omnicare,
8 Los Angeles Superior Court Case No. BC405988; Pena v. Downey, Los Angeles Superior Court Case
9 No. BC447731; Seielstad v. Aegis Senior Communities, LLC, United States District Court Case No. 09-
10 01797; Covillo v. Specialty's Café and Bakery, Inc., 11-CV-00594-DMR; Johnson v. Sky Chefs, Inc.,
11 11-CV- 05619-LHK. Ms. Mohan has also worked with me on class-action matters and has been
12 appointed class counsel in connection therewith, e.g. Lobato v. Abbott Cardiovascular Systems, Inc.,
13 Santa Clara Superior Court Case No. 110CV175637; Rentoria v. Omnicare, Los Angeles Superior Court
14 Case No. BC405988; Covillo v. Specialty's Café and Bakery, Inc., United States District Court,
15 Northern District Case No.11-CV-00594-DMR; Johnson v. Sky Chefs, Inc., United States District
16 Court, Northern District Case No. 11-CV- 05619-LHK; and Chookey v. Sears Roebuck and Co., United
17 States District Court, Central District Case No.12-CV-2491-GW.

18 57. **Lin Zhan** is an associate at Harris & Ruble. His practice is primarily focused on
19 individual and class action cases involving wage-and-hour violations under the California Labor Code
20 and the Fair Labor Standards Act, as well as general business litigation. Mr. Zhan earned both of his
21 LL.M. and J.D. from the University of Southern California. While at USC, Mr. Zhan was a teaching
22 assistant for Prof. Heilman's Introduction to the U.S. Legal System and Topics in American Law. Mr.
23 Zhan graduated from Fujian Normal University with a degree in Law in 2013. During his third year at
24 law school in Los Angeles, Mr. Zhan worked as a law clerk at Harris & Ruble. Prior to joining Harris &
25 Ruble, Mr. Zhan passed the Chinese bar exam in 2013 and worked at a boutique law firm in China,
26 where he handled a range of civil litigation and transactional matters including contract and real estate
27 matters. Mr. Zhan also passed the National Level Three Psychologist exam in China in 2011.

28 58. **Christina Nordsten** joined Harris and Ruble in 2014. Ms. Nordsten graduated from

1 Stockholm University Law School in 2013 with a Bachelor of Law (LL.B.). In 2014, Ms. Nordsten
2 graduated from USC Gould School of Law with a Masters of Law (LL.M.) and an Entertainment Law
3 Certificate. At USC, Ms. Nordsten was a Board Member of the Student Bar Association. Ms.
4 Nordsten’s practice is primarily focused on class action cases involving wage-and-hour violations under
5 California law, as well as entertainment-related matters.

6 59. **Rebecca Lee**, an attorney from Harris & Ruble who worked on the above-captioned case,
7 has worked with me on a number of wage and hour matters. Ms. Lee earned her J.D. from the USC
8 Gould School of Law in 2013. At USC, she was the President of the Public Interest Law Foundation,
9 and was a Production Editor for the Review of Law and Social Justice. Prior to joining Harris & Ruble,
10 Ms. Lee served as a Peace Corps volunteer in Cajabamba, Ecuador. During her service, she worked as a
11 health educator, and helped local groups found small businesses. She graduated from Columbia
12 University in 2008 *cum laude*, with honors. She earned a B.A. in political science. Ms. Lee has worked
13 with me on numerous class-action matters, E.g. Sherman v. CLP Resources, Inc., Central District of
14 California Case No. Case No. CV 12-8080 GW, *consolidated with* Case No. CV 12-8080 GW.

15 ***Request for Judicial Notice***

16 60. Pursuant to Cal. Evidence code section 452 and California Rules of Court 3.1306,
17 Plaintiffs’ respectfully request that the Court take Judicial Notice of Exhibits 4, 6 & 7, attached hereto.
18 Judicial notice may properly be taken of Exhibits 4, 6 & 7 submitted herewith, pursuant to California
19 Evidence Code section 452(d), which provide: “Judicial notice may be taken of the following matters...

20 (d) Records of (1) any court of this state or (2) any court of record of the United States or of any
21 state of the United States.”

22 California Evidence Code section 452. See Jarvis v. JP Morgan Chase Bank, N.A., 2010 U.S.
23 Dist. LEXIS 84958 at *3 (stating that “[j]udicial notice may be taken of documents available on
24 government websites”); Dingle v. BioPort Corp., 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003) (stating
25 that “[p]ublic records and government documents are generally considered ‘not to be subject to
26 reasonable dispute’” and that “[t]his includes public records and government documents available from
27 reliable sources on the Internet”); Cal. Evid. Code § 452(c) and (h).

28 61. Pursuant to California Evidence Code section 452(d), Plaintiffs respectfully request that

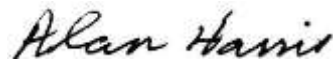
1 the Court take judicial notice of the attached and referenced documents:

2 a) **Exhibit 5:** Declaration of David Gottlieb

3 62. California Evidence Code section 453 provides that the Court “shall take judicial
4 notice of any matter specified in Section 452 if a party requests it,” gives the opposing party “sufficient
5 notice of the request” and provides the Court with “sufficient information to enable it to take judicial
6 notice of the matter.” Cal. Evid. Code § 453. In addition, California Evidence Code section 452(h)
7 permits the Court to take judicial notice of a fact that is “not reasonably subject to dispute and [is]
8 capable of immediate and accurate determination by resort to sources of reasonably indisputable
9 accuracy.” Cal. Evid. Code § 452(h).

10 63. “Both trial and appellate courts may properly take judicial notice of a party’s earlier
11 pleadings and positions as well as established facts from both the same case *and other cases*. Cantu v.
12 Resolution Trust Corp., 4 Cal. App. 4th 857, 877 (1992) citing Cal. Evid. Code § 452, Colapinto v.
13 County of Riverside, 230 Cal. App. 3d 147, 151 (1991), and Morton v. Loveman, 267 Cal. App. 2d 712,
14 717-19 (1968) (emphasis in original). The Court may also take judicial notice on its own volition,
15 without a request for judicial notice. See Cal. Evid. Code, § 455 (a); Joslin v. H.A.S. Ins. Brokerage,
16 184 Cal.App.3d 369, 374 (1986) (reviewing propriety of judicial notice in ruling on demurrer, even
17 though record did not contain request for judicial notice); Scott v. JPMorgan Chase Bank, N.A., 214 Cal.
18 App. 4th 743, 752 (2013), as modified on denial of reh’g (Apr. 16, 2013), review denied (June 12,
19 2013). Therefore, Plaintiff respectfully requests that the Court take judicial notice of the documents
20 requested.

21 I have read the foregoing, and the facts set forth therein are true and correct of my own personal
22 knowledge. Executed September 4, 2020, in the County of Los Angeles, State of California.

23
24 

25 Alan Harris
26
27
28

PROOF OF SERVICE

I am an attorney for Plaintiff(s) herein, over the age of eighteen years, and not a party to the within action. My business address is 655 N. Central Ave., 17th Floor, Glendale, CA 91203. On September 4, 2020, I served the within document(s):

DECLARATION OF ALAN HARRIS IN SUPPORT OF RENEWED MOTION FOR PRELIMINARY APPROVAL

I caused such to be delivered by e-mail to:

angela.agrusa@us.dlapiper.com
levi.heath@us.dlapiper.com
Steve.hernandez@dlapiper.com

I am readily familiar with the Firm’s practice of collection and processing correspondence for mailing. Under that practice, the document(s) would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

Angela C. Agrusa
Levi W. Heath
Steve L. Hernández
DLA PIPER LLP (US)
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704

MESSNER REEVES LLP
Charles C. Cavanagh
1430 Wynkoop Street, Suite 300
Denver, Colorado 80202

I declare under penalty of perjury that the above is true and correct. Executed on September 4, 2020, at Los Angeles, California.



David Garrett

Exhibit List

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Exhibit 1 Amended Settlement
- Exhibit 2 Amended Notice Package
- Exhibit 3 PAGA Settlement Upload Acknowledgement
- Exhibit 4 Claims Administrator Bid
- Exhibit 5 Declaration of David Gottlieb
- Exhibit 6 Excerpts from Stinson Deposition

Exhibit 1

1 Alan Harris (SBN 146079)
David Garrett (SBN 160274)
2 HARRIS & RUBLE
655 North Central Avenue, 17th Floor
3 Glendale, CA 91203
Telephone: (323) 962-3777
4 Facsimile: (323) 962-3004
aharris@harrisandruble.com

5 David Harris (SBN 215224)
6 NORTH BAY LAW GROUP
116 E. Blithedale Ave., Ste. 2
7 Mill Valley, CA 94941
Telephone: (415) 388-8788
8 Facsimile: (415) 388-8770
dsh@northbaylawgroup.com

9 Attorneys for Plaintiffs

10
11
12
13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN FRANCISCO**

15
16 TANIKA TURLEY and CHRISTOPHER
17 THOMPSON, individually and on behalf
of all others similarly situated,

18 Plaintiffs,

19 v.

20 CHIPOTLE SERVICES, LLC, and DOE
21 ONE through and including DOE ONE-
HUNDED,

22 Defendants.

Case No. CGC-15-544936

ASSIGNED FOR ALL PURPOSES TO
HON. ANNE-CHRISTINE MASSULLO
DEPARTMENT 304

**STIPULATION OF CLASS ACTION
SETTLEMENT AND SETTLEMENT
AGREEMENT**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Angela C. Agrusa (SBN 131337)
angela.agrusa@us.dlapiper.com
Levi W. Heath (SBN 220854)
levi.heath@us.dlapiper.com
Steve L. Hernández (SBN 229065)
Steve.hernandez@dlapiper.com
DLA PIPER LLP (US)
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704
Tel: (310) 595-3000
Fax: (310) 595-3300

MESSNER REEVES LLP
Charles C. Cavanagh, Cal. Bar No. 198468
1430 Wynkoop Street, Suite 300
Denver, Colorado 80202
Telephone: 303.623.1800
Facsimile: 303.623.0552

Attorneys for Defendant
CHIPOTLE SERVICES, LLC

1 **STIPULATION OF CLASS ACTION SETTLEMENT AND SETTLEMENT AGREEMENT**

2 Subject to its terms and conditions and the approval of the Court, this Joint Stipulation of
3 Class Action Settlement and Class Action Settlement Agreement and Release (the “Settlement” or
4 “Agreement”) is made and entered into by and between Plaintiff TANIKA TURLEY, individually
5 and on behalf of the class (“Plaintiffs”), and Defendant CHIPOTLE SERVICES, LLC (herein
6 “CHIPOTLE” or “Defendant”). Plaintiffs and Defendant are collectively referred to in this
7 Settlement as the “Parties.”

8 **I. DEFINITIONS**

9 1. In addition to terms defined elsewhere in the Settlement, as used in this
10 Settlement the following terms have the meanings indicated below:

11 a. “Action” means the civil action initiated on March 25, 2015, in San
12 Francisco Superior Court styled as *TANIKA TURLEY v. CHIPOTLE Inc.*, Case No. CGC-15-544936
13 (the “Action”), along with any amended complaints filed therewith.

14 b. “Claims Administrator” means an administrator mutually agreed to by
15 the Parties and approved by the Court that will perform the customary duties of a claims
16 administrator including but not limited to, the duties enumerated in this Agreement. The parties
17 have sought bids from several reputable administrators, and currently anticipate that they will seek
18 approval from the Court to utilize Phoenix Class Action Administrators as the Claims Administrator.

19 c. “Class Member” shall refer to any current or former employee of Defendant who falls
20 within the definition of the class. Subject to Court approval, the settlement “Class” shall consist of
21 all current and former non-exempt employees of Defendant who were hired before August 1, 2014
22 and who worked in California at any time between October 1, 2014 and August 1, 2020 (the “Class
23 Period”). Excluded from the Class are any California employees that are members of the collective
24 in the currently pending *Turner v. Chipotle Mexican Grill, Inc.*, Case No. 1:14-cv-02612-JLK-CBS
25 or who filed individual arbitrations related to that action, as well as any other person who had a
26 pending arbitration or lawsuit against Defendant as of August 1, 2020.

27 d. “Class Counsel” shall refer to Alan Harris, Priya Mohan and David
28 Garrett of Harris & Ruble and David Harris of North Bay Law Group.

1 g. “Class Notice” means the Notice, which the Claims Administrator will
2 mail to each Class Member explaining the terms of the settlement contemplated by this Agreement,
3 in a format that is mutually acceptable to the parties. The Class Notice shall be accompanied by an
4 Opt-Out Notice. The Class Notice and Opt-Out Notice are collectively referred to as the “Notice
5 Materials”. The form of Notice Materials to be used are attached collectively hereto as **Exhibit A**.
6 The approved Notice Materials shall also be translated into Spanish, which shall be included in the
7 Claims Administrator bid.

8 h. “Class Representative” shall refer to Plaintiff Tanika Turley.

9 i. “Class Representative Payment” means the Court-approved service
10 payment to Class Representatives for their services as Class Representative and for their execution
11 of a general release of claims known and unknown.

12 j. “Counsel for Defendant” or “Defense Counsel” means Angela C.
13 Agrusa, Levi W. Heath, and Steve L. Hernández of DLA PIPER LLP (US).

14 k. “Class Period” shall be from October 1, 2014 through August 1, 2020.

15 l. “Defendant” means CHIPOTLE SERVICES, LLC.

16 m. “Final Approval Hearing” means the hearing contemplated by the
17 Parties, at which the Court will approve, in final, the settlement and make such other final rulings as
18 are contemplated by this Settlement Agreement.

19 n. “Final Approval Order” means the Court’s order granting final
20 approval of the Settlement, which will constitute a “judgment” within the meaning of Code of Civil
21 Procedure section 577. The form of Final Approval Order to be submitted is attached hereto as
22 **Exhibit C**.

23 o. “Final Effective Date” shall be the first date after all of the following
24 events or conditions have been met or have occurred:

25 (1) the Court has, by entry of a Preliminary Approval Order:

26 (a) Approved the certification of the Class for settlement
27 purposes;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(b) Preliminarily approved the settlement set forth in this Settlement Agreement, and the method of providing the Court-approved Class Notice to the certified class;

(2) The Court has entered a Final Approval Order approving this settlement and the Court has entered the Final Judgment as provided in Paragraph 1.p. below;

(3) No valid rescission of the Settlement Agreement has occurred;

(4) The time to appeal from the Final Approval Order has expired and no notice of appeal has been filed; and

(5) In the event that an appeal is actually filed, the latest of the following, if applicable, has occurred:

(a) Any appeal from the Final Approval Order has been finally dismissed;

(b) The Final Approval Order has been affirmed on appeal in a form substantially identical to the form of the Final Approval Order entered by the Court;

(c) The time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or

(d) If a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Approval Order in a form substantially identical to the form of the Final Approval Order entered by the Court.

p. “Final Judgment” means the judgment entered by the Court in conjunction with the Final Approval Order. The Parties shall submit an order of Final Judgment setting forth the terms of this Settlement Agreement, by incorporation or otherwise, for execution and entry by the Court at the time of the Final Approval Hearing or at such other time as the Court deems appropriate. The form of Final Judgment to be submitted is attached hereto as **Exhibit D**.

1 q. "Gross Individual Settlement Payment" means the gross amount of the
2 Net Settlement Amount each Participating Class Member will be paid. The sum of these Gross
3 Individual Settlement Payments to individual Participating Class Members shall constitute the
4 "Class Settlement Payment." The allocation of payment of claims between the class members and
5 tax treatment of such claims shall be 25% wages, 25% interest, and 50% penalties and expense
6 reimbursement.

7 r. In consideration for the release of claims, Defendant shall pay, or
8 cause to be paid, the total sum of \$1,750,000.00, or the amount as adjusted pursuant to section
9 V.A.6, below (the "Gross Settlement Amount"), in cash, for payment of all claims, payment of
10 claims administration, attorney fees, attorney expenses, a payment to the Labor Workforce
11 Development Agency (the "LWDA"), and service awards for the named plaintiffs.

12 The following litigation costs and costs of administration will be deducted from the Gross
13 Settlement Amount: (a) attorneys' fees and recoverable costs; (b) settlement administration fees not
14 to exceed \$50,000; (c) a net payment to the Labor Workforce Development Agency in the amount of
15 \$50,000; (d) a service award to Turley not to exceed \$2,500 for her services as Class
16 Representative; (e) attorney fees in an amount not to exceed 33.33% (\$583,333) and reimbursement
17 of actual costs not to exceed \$25,000.

18 The "Net Settlement Amount" will equal the net amount available for payment of claims to
19 Class Members, as follows: \$1,039,167. The amount is calculated as \$1,750,000 less: (a) settlement
20 administration fees not to exceed \$50,000; (b) a net payment to the Labor Workforce Development
21 Agency in the amount of \$50,000; (b) a service award to Turley not to exceed \$2,500 for her
22 services as Class Representative; (d) attorney fees in an amount not to exceed 33.33% (\$583,333)
23 and reimbursement of actual costs not to exceed \$25,000.

24 Class Members who do not affirmatively opt-out of the settlement will receive a check in
25 amount equal to a pro-rata share of the Net Settlement Amount based on pay periods worked during
26 the Class Period. All checks shall be good for 180 days from the date of mailing. Following the
27 expiration of 180 days, the Claims Administrator shall inform the parties of the total amount of
28 uncashed checks (the "Uncashed First Checks"). Because the parties intend to provide as much

1 relief as practicable to the Class Members, the parties will facilitate a second distribution to the Class
2 Members who cashed their checks during the first round (the “Second Distribution”) if the amount
3 of Uncashed First Checks exceeds \$27,500. For the Second Distribution, the Class Members who
4 cashed their checks during the first round shall be mailed a check in an amount equal to a pro rata
5 share of the amount of the Uncashed First Checks after deductions for postage and handling by the
6 Claims Administrator.

7 Following the Second Distribution, if any, all checks not cashed within 180 days of payment
8 shall be paid to California pro bono law firm, Public Counsel, and approved by the Court, in
9 accordance with Code of Civil Procedure section 384. Should the Court approve Public Counsel as
10 the *cy pres* recipient, the sum of the uncashed checks and any other unpaid residue or unclaimed or
11 abandoned class member funds, plus any interest on that sum, shall be made payable to Public
12 Counsel, pursuant to Cal. Code Civ. Proc., § 384, subd. (b).

13 If the number of Class Members exceeds 6,993 by more than 10 percent, or if the number of
14 wage statements exceeds 73,665 by more than 10 percent, the Gross Settlement Amount will
15 increase by a proportionate percentage for all additional Class Members or wage statements above
16 the 10 percent allowance.

17 s. “PAGA Payment” means the net amount of Fifty Thousand Dollars
18 and No Cents (\$50,000.00) all of which shall be remitted to the California Labor and Workforce
19 Development Agency for the resolution of all Class Members’ claims under the PAGA, California
20 Labor Code Section 2698, *et. seq.*

21 t. “Participating Class Members” means those members of the Class who
22 do not Opt Out.

23 u. “Preliminary Approval Order” means the order of the Court granting
24 preliminary approval of this Settlement Agreement on the terms provided herein or as the same may
25 be modified by subsequent mutual agreement of the Parties with, as appropriate, approval of the
26 Court. The form of Preliminary Approval Order to be submitted is attached hereto as **Exhibit B**.

27 **II. BACKGROUND AND REASONS FOR SETTLEMENT**

28 2. On March 25, 2015, Plaintiff TANIKA TURLEY filed a Complaint in the

1 Superior Court of the State of California, County of San Francisco, entitled *TANIKA TURLEY v.*
2 *CHIPOTLE Inc.*, Case No. CGC-15-544936, on behalf of herself and other non-exempt employees
3 who worked for Defendant in California alleging claims for: 1) failure to pay all earned wages and
4 compensation upon termination in violation of Labor Code sections 201, 202 and 203; (2) unfair
5 business practices in violation of California Business and Professions Code section 17200; and (3)
6 Violation of PAGA. On March 27, 2015, Plaintiff sent by certified mail a letter to the California
7 Labor and Workforce Development Agency (“LWDA”) notifying the agency of her allegations that
8 Defendant violated California Labor Code sections 201 to 203, as set forth in the Complaint. The
9 Lawsuit seeks lost wages, interest, penalties, injunctive relief, attorneys’ fees and expenses.

10 3. On July 23, 2015, Plaintiff TANIKA TURLEY filed a First Amended
11 Complaint (the “FAC”) in the Superior Court of the State of California, County of San Francisco,
12 entitled *TANIKA TURLEY v. CHIPOTLE Inc.*, Case No. CGC-15-544936, on behalf of herself and
13 other non-exempt employees who worked for Defendant in California alleging claims for: 1) failure
14 to pay all earned wages and compensation upon termination in violation of Labor Code sections 201,
15 202 and 203; (2) failure to provide lawful wage statements in violation of Labor Code section 226;
16 (3) failure to provide proper response to document request in violation of Labor Code section 226;
17 (4) failure to provide proper rest breaks in violation of Labor Code section 226.7; (5) failure to
18 provide proper meal breaks in violation of Labor Code section 226.7; (6) unfair business practices in
19 violation of California Business and Professions Code section 17200; and (7) Violation of PAGA.

20 4. Defendant denies all of the allegations in Plaintiff’s operative FAC and
21 maintains that the Court should not certify the class or representative action proposed by Plaintiff,
22 other than for the sole purpose of this Settlement, as set forth in its Answer to FAC and Affirmative
23 Defenses, filed on August 27, 2015.

24 5. The parties agreed to attempt to resolve the matters through mediation and
25 agreed to engage in informal discovery leading up to that mediation. To facilitate mediation in this
26 case, Defendant provided data on the number of paystubs issued, the number of class members, and
27 other relevant class data.

28 6. Using the data analysis, the parties engaged in mediation under the guidance

1 of an experienced wage and hour neutral, Jeff Krivis, Esq. on October 1, 2019. With the mediator's
2 assistance, the Parties reached a settlement and were able to sign a Memorandum of Understanding
3 on or about October 17, 2019.

4 7. Prior to mediation, counsel for Plaintiff informed counsel for Defendant that
5 Plaintiff intended to amend their operative class action complaint to add a new plaintiff and claims
6 for overtime violations (Labor Code §§ 510, 1194 and 1198), unpaid minimum wages (Labor Code
7 §§ 1194, 1194.2, 1197 and 1197.1) and failure to reimburse (Labor Code § 2802). As a condition of
8 settlement, Plaintiff has amended her operative complaint to add a new plaintiff and claims for
9 overtime violations (Labor Code §§ 510, 1194 and 1198), unpaid minimum wages (Labor Code §§
10 1194, 1194.2, 1197 and 1197.1) and failure to reimburse (Labor Code § 2802). The Parties have
11 filed a Stipulation and Order for filing of the TAC with the Court. The Parties have stipulated that
12 no responsive pleading need be filed in response to the TAC as the case has been settled.

13 8. Class Counsel represent that they have conducted a thorough investigation
14 into the facts of this case, and have diligently pursued an investigation of the Class Members' claims
15 against Defendant, including: (1) interviewing Class Members and analyzing the results of Class
16 Member interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and
17 the potential defenses; and (4) reviewing relevant data including time records and pay data. Class
18 Counsel reviewed payroll records for the named plaintiff and other class members and prepared a
19 detailed damage analysis. Based on their own independent investigation and evaluation, Class
20 Counsel are of the opinion that the Settlement is fair, reasonable and adequate and is in the best
21 interest of the Class in light of all known facts and circumstances, including the risk of significant
22 delay, defenses asserted by Defendant, and potential appellate issues. Without admitting any
23 liability, Defendant agrees that the Settlement is fair, reasonable and adequate.

24 9. It is the mutual desire of the Parties to fully, finally, and forever settle,
25 compromise, and discharge all disputes and claims raised in or related in any way to the Action.
26 Thus, the entry of the Final Approval Order in this Action shall release all class claims which were
27 or which could have been alleged in Plaintiff's Complaint. The Parties agree to cooperate and take
28 all steps necessary and appropriate to obtain preliminary and final approval of this Settlement and to

1 effectuate its terms.

2 10. The Court must approve the settlement. The Parties will cooperate in good
3 faith and utilize best efforts to obtain approval, including in the preparation of all paperwork
4 necessary to obtain approval. Absent Court approval there is no settlement.

5 11. Plaintiff's counsel intends to apply to the Court for a fee award, plus expenses
6 and costs incurred. Defendant will not object to a claim for attorney fees of up to 33.33% of the
7 Gross Settlement Amount, actual costs as documented in billing statements of the attorneys for the
8 named Plaintiffs, and a service award to plaintiff Turley of up to \$2,500.00. If the Court believes the
9 fees, costs, or service awards should be reduced, the other terms of the settlement will remain in
10 effect and any such reduction will not affect the remaining terms, other than adjusting the Net
11 Settlement Amount. A reduction to the fees, costs, or service awards is not a ground for rescission.

12 12. Class Members who do not affirmatively opt-out of the settlement will receive
13 a pro-rata share of the Wage Statement Settlement Amount based on pay periods worked during the
14 Class Period.

15 13. If more than 10% of the class members opt-out of the settlement, Defendant
16 may rescind the settlement.

17 14. The Parties and their counsel shall issue no public statements and shall make
18 no comments to media or press with respect to the Action or the settlement at any time (including
19 but not limited to press releases), except as required by law. In addition, the Parties and their counsel
20 shall not make, publish, circulate or cause to be made, published or circulated any statements that
21 represent or suggest any wrongdoing by Defendant, or that this settlement or any order by the Court
22 regarding the settlement represents or implies any wrongdoing by, or any admission of liability by,
23 Defendant, or a finding by the Court of liability or wrongdoing.

24 **III. NO ADMISSION**

25 1. Nothing contained in this Joint Stipulation and the Settlement contemplated in
26 the Joint Stipulation shall be construed or deemed an admission of liability, culpability, negligence,
27 or wrongdoing on the part of Defendant and Defendant denies liability therefor. While Defendant
28 believes that this Action meets the prerequisites for certification of a settlement class, the fact that

1 Defendant seeks approval of this Settlement in the form of a class action shall not be construed as an
2 admission that the underlying action was properly brought as a class action or a representative action
3 under California Business and Professions Code section 17200 or California Labor Code 2699 for
4 purposes other than settlement. Each of the Parties has entered into this Settlement with the
5 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.
6 Settlement of the Action, the negotiation and execution of this Joint Stipulation, and all acts
7 performed or documents executed pursuant to or in furtherance of this Joint Stipulation or the
8 Settlement: (1) are not, shall not be deemed to be, and may not be used as, an admission or evidence
9 of any wrongdoing or liability on the part of Defendant, and each of them; (2) are not, shall not be
10 deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part
11 of Defendant in any civil, criminal, administrative or arbitral proceeding in any court, administrative
12 agency or other tribunal; and (3) are not, shall not be deemed to be, and may not be used as, an
13 admission or evidence of the appropriateness of these or similar claims for class certification or
14 administration other than for purposes of administering this Joint Stipulation. This Joint Stipulation
15 is a settlement document and shall be inadmissible in evidence in any proceeding, except an action
16 or proceeding to approve, interpret, or enforce the terms of the Joint Stipulation.

17 **IV. CERTIFICATION OF A CODE OF CIVIL PROCEDURE SECTION 382 CLASS**

18 2. For Settlement purposes only, the Parties stipulate to conditional certification
19 of the Settlement Class (“Class”), an opt-out class under California Code of Civil Procedure section
20 382, that is defined as follows:

21 The “Class Member” shall consist of any current or former employee
22 of Chipotle who was hired before August 1, 2014 and who worked in
23 California at any time between October 1, 2014 and August 1, 2020
24 (“Class Period”). Each person in the class is a “Class Member,” and all
25 such persons are referred to as the “Class.”

26 Excluded from the Class are any California employees that are
27 members of the collective in the currently pending *Turner v. Chipotle*
28 *Mexican Grill, Inc., Case No. 1:14-cv-02612-JLK-CBS* or who have
filed individual arbitrations related to that action, as well as any other
person who has a pending arbitration or lawsuit as of the date hereof.

3. The Parties stipulate that Plaintiff TANIKA TURLEY shall be appointed as
the Class Representative for the Class.

1 4. The Parties stipulate that Harris & Ruble and North Bay Law Group shall be
2 appointed Class Counsel for the Settlement Class.

3 5. The stipulations to certify the Settlement Class are completely contingent
4 upon final approval of this Agreement by the Court and are made for settlement purposes only. If
5 the Settlement is not approved by the Court, is overturned on appeal, or does not become final for
6 any other reason, the Parties agree that the certification of the Settlement Class is void ab initio and
7 that, if necessary, they shall stipulate to decertification of the Settlement Class without prejudice to
8 the propriety of class certification being adjudicated on the merits.

9 **V. TERMS OF THE SETTLEMENT**

10 **A. Gross Settlement Amount**

11 1. In consideration for the release of claims, Defendant shall pay, or cause to be
12 paid the Gross Settlement Amount for payment of all claims, payment of claims administration,
13 attorney fees, attorney expenses, a payment to the LWDA, and service awards for the named
14 plaintiffs.

15 2. The following litigation costs and costs of administration will be deducted
16 from the Gross Settlement Amount: (a) attorneys' fees and recoverable costs; (b) settlement
17 administration fees; (c) a payment to the Labor Workforce Development Agency in the amount of
18 \$50,000; and (d) a service award to named plaintiff Turley not to exceed \$2,500 for her services as
19 Class Representative.

20 3. The "Net Settlement Amount" will equal the net amount available for
21 payment of claims to Class Members (after deducting the above-referenced fees and costs from the
22 Gross Settlement Amount).

23 4. This is a non-reversionary settlement and none of the Gross Settlement
24 Amount will revert to the Defendant.

25 5. The allocation of payment of claims between the class members and tax
26 treatment of such claims shall be 25% wages, 25% interest, and 50% penalties and expense
27 reimbursement.
28

1 6. If the number of Class Members exceeds 6,993 by more than 10%, or if the
2 number of wage statements exceeds 73,665 by more than 10%, the Gross Settlement Amount will
3 increase by a proportionate percentage for all additional Class Members or wage statements above
4 the 10 percent allowance.

5 7. This Settlement does not establish a fund for the payment of claims except as
6 expressly provided for herein. The Gross Settlement Amount shall remain in the possession,
7 custody, and control of Defendant until the settlement amounts are distributed as set forth herein.
8 The Gross Settlement Amount shall not be segregated but shall remain in Defendant's general funds
9 until distributed or shall be provided to the Claims Administrator for distribution sufficiently in
10 advance for the Claims Administrator to meet its obligations under the Settlement Agreement.

11 8. In the event that this Settlement Agreement is canceled, rescinded, terminated,
12 voided, or nullified, however that may occur, or the settlement of the Action is barred by operation
13 of law, is invalidated, is not approved or otherwise is ordered not to be carried out by the Court or
14 any court of competent jurisdiction, Defendant will cease to have any obligation to pay or provide
15 any portion of the Gross Settlement Amount to anyone under the terms of this Settlement
16 Agreement.

17 **B. Attorneys' Fees and Costs**

18 9. The Action alleges a potential claim for attorneys' fees and costs pursuant to,
19 inter alia, the California Labor Code. The Parties agree that any and all such claims for attorneys'
20 fees and costs have been settled in this Joint Stipulation subject only to approval by the Court.

21 10. Defendant understands that Class Counsel will apply to the Court for an award
22 of attorneys' fees and costs, which will be scheduled for determination at the final fairness and
23 approval hearing described below. Plaintiff's counsel intends to apply to the Court for a fee award,
24 plus expenses and costs incurred. Defendant will not object to a claim for attorney fees of up to
25 33.33% of the Gross Settlement Amount (\$583,333), costs (up to \$25,000) as documented in billing
26 statements of the attorneys for the named Plaintiffs, and a service award to named plaintiff Turley of
27 up to \$2,500.00. If the Court believes the fees, costs, or service awards should be reduced, the other
28 terms of the settlement will remain in effect and any such reduction will not affect the remaining

1 terms, other than adjusting the Net Settlement Amount. A reduction to the fees, costs, or service
2 awards is not a ground for rescinding the settlement.

3 11. The fee award shall be paid exclusively from the Gross Settlement Amount,
4 and will compensate Class Counsel for all of the work already performed in the Action and all work
5 remaining to be performed in documenting the Settlement, securing Court approval of the
6 Settlement, administering the Settlement, ensuring that the Settlement is fairly administered and
7 implemented, and defending against any appeals, as well as all associated expenses. The litigation
8 costs and expenses shall be those costs and expenses incurred by Plaintiff as set forth on Class
9 Counsel's billing statement, including but not limited to mediation fees, expert and consultant fees,
10 filing fees, attorney service charges, online research charges, travel expenses (including mileage,
11 parking, meals, hotels and flights), copying expenses, deposition expenses, Belaire West class notice
12 expenses (if not covered by the claims administrator bid), courier fees, postage and delivery
13 charges. Neither the Class Representatives, Class Counsel, nor any other Class Member shall seek
14 payment of attorneys' fees or reimbursement of costs or expenses from Defendant except as
15 expressly set forth in this Joint Stipulation.

16 12. The substance of Class Counsel's application for attorneys' fees and costs is
17 not a material part of this Joint Stipulation, and is to be considered separately from the consideration
18 of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. However,
19 all claims for attorneys' fees and costs or expenses that the Settlement Class may possess against
20 Defendant have been compromised and resolved in this Joint Stipulation. Any proceedings related
21 to Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this Joint
22 Stipulation. If Class Counsel appeals an adverse ruling of the Court regarding its fee and cost
23 application, the ruling of the appellate court (regardless of its substance) shall not constitute a
24 material alteration of a term of this Joint Stipulation. Class Counsel waives and releases any claim
25 for fees and costs in excess of that which are allowed by the Court or on appellate review of the
26 Court's fees and costs decision or otherwise. The amount, if any, by which the finally approved fees
27 and costs are less than the maximum amount which can be sought pursuant to this Agreement shall
28 be a part of the wages and non-wage income provided Class Members in equal proportions.

1 13. No later than fifteen (15) calendar days after the Court's approval of Class
2 Counsel's application for attorneys' fees and costs, Class Counsel shall deliver to the Claims
3 Administrator written instructions that describe the manner and mode of payment of such attorneys'
4 fees and costs (and, in the absence of such instructions, such attorneys' fees and costs shall be sent
5 by wire transfer as set forth below), and fully-executed Form W-9s with respect to all persons or
6 entities to whom some or all of the attorneys' fees and costs shall be paid.

7 14. No later than ten (10) calendar days after the Final Effective Date, Defendant
8 shall wire transfer the Gross Settlement Amount to the Claims Administrator. Assuming the
9 conditions in Paragraph 17 have been met, no later than five (5) calendar days after the receipt of the
10 Gross Settlement Amount from Defendant, the Claims Administrator shall issue a payment to Class
11 Counsel for the amount of attorneys' fees and costs approved by the Court and in accordance with
12 the instructions provided by Class Counsel.

13 15. The Claims Administrator will issue to Class Counsel IRS Form 1099s for the
14 amounts paid for attorneys' fees and costs under this Settlement.

15 **C. Payment to Claims Administrator**

16 16. The fees and expenses of the Claims Administrator are estimated at \$50,000.
17 To the extent that the costs of administration exceed the amount agreed upon, the shortfall will be
18 taken from the Net Settlement Amount and thereby reduce the amount of penalties payable to the
19 Participating Class Members. To the extent the cost of administration is less than the amount agreed
20 upon, the excess shall become part of the Net Settlement Amount and shall increase the amount of
21 penalties payable to the Participating Class Members.

22 17. On or before the date of the Final Approval Hearing, the Claims
23 Administrator shall deliver to counsel for Defendant a fully-executed Form W-9.

24 18. No later than ten (10) calendar days after the Final Effective Date, Defendant
25 shall mail or wire transfer the Gross Settlement Amount to the Claims Administrator. At the time it
26 receives the Gross Settlement, the Claims Administrator may issue a payment to itself for the
27 amount of fees approved by the Court.
28

1 19. Defendant will issue to the Claims Administrator an IRS Form 1099 for the
2 sum paid to it under this Settlement.

3 **D. Class Representative Payments to Class Representatives**

4 20. Defendant understands that Plaintiffs and Class Counsel will apply to the
5 Court for Class Representative Payment, which will be scheduled for determination at the final
6 fairness and approval hearing. Plaintiff and Class Counsel will apply for a Class Representative
7 Payment in an amount up to, but not to exceed, Two Thousand Five Hundred Dollars and No Cents
8 (\$2,500.00) to Plaintiff Turley as Class Representative, which shall be paid exclusively from the
9 Gross Settlement Amount, and will compensate Plaintiff Turley for her services as the Class
10 Representatives. Defendant will not oppose Plaintiff's application for the Class Representative
11 Payment up to the stated amount. The amount, if any, by which the Class Representative Payment
12 are less than the maximum amount which can be sought pursuant to this Agreement shall be part of
13 the Net Settlement Distribution Amount.

14 21. As condition precedent to the payment of this Class Representative Payment,
15 Plaintiff releases any and all claims against Defendant as set forth in the Class Representative
16 Release.

17 22. Any Class Representative Payment awarded by the Court shall be in addition
18 to the payment, if any, Plaintiff may otherwise receive as a Participating Class Member and shall not
19 be subject to payroll tax withholding and deductions for this payment.

20 23. No later than seven (7) calendar days after the receipt of the Gross Settlement
21 Amount from Defendant, the Claims Administrator shall issue the Class Representative Payment to
22 Class Counsel on behalf of Plaintiff in the amount approved by the Court, subject to all authorized
23 and required deductions.

24 24. The Claims Administrator will issue IRS Form 1099-MISC to Plaintiff for the
25 amount of the Class Representative Payment.

26 **E. Distribution to Participating Class Members**

27 25. The following litigation costs and costs of administration will be deducted
28 from the Gross Settlement Amount: (a) attorneys' fees and recoverable costs; (b) settlement

1 administration fees; (c) a net payment to the Labor Workforce Development Agency in the amount
2 of \$50,000; and (d) a service award to named plaintiff Turley not to exceed \$2,500 as Class
3 Representative.

4 26. The “Net Settlement Amount” will equal the net amount available for
5 payment of claims to Class Members (after deducting the above-referenced fees and costs from the
6 Gross Settlement Amount).

7 27. Class Members who do not affirmatively opt-out of the settlement will receive
8 a pro-rata share of the Wage Statement Settlement Amount based on pay periods worked during the
9 Class Period. After a Second Distribution, if any, all checks not cashed within 180 days of payment
10 shall be paid to Public Counsel, the *cy pres* of Defendant’s selection, in accordance with Code of
11 Civil Procedure section 384.

12 28. The Participating Class Members shall be paid their respective Individual
13 Settlement Payments as provided in this Agreement pursuant to section IX below. The allocation of
14 payment of claims between the class members and tax treatment of such claims shall be 25% wages,
15 25% interest, and 50% penalties and expense reimbursement.

16
17 **F. PAGA Payment**

18 29. The Parties have agreed to allocate Fifty Thousand Dollars and Zero Cents
19 (\$50,000.00) for the resolution of all Class Members’ claims under the California Private Attorney
20 General Act, California Labor Code Section 2698, et. seq. The PAGA Payment will be remitted to
21 the California Labor and Workforce Development Agency.

22 30. This amount is subject to review and approval by the Court as part of the
23 settlement process pursuant to Labor Code section 2699(1)(2). This Settlement is contingent on the
24 Court approving the PAGA release and payment. Plaintiff’s counsel will submit a copy of the
25 Settlement to the LWDA at the same time the Settlement is submitted to the Court in accordance
26 with Labor Code section 2699 (1)(2).

1 31. Within five (5) calendar days after the receipt of the Gross Settlement Amount
2 from Defendant, the Claims Administrator will remit the PAGA Payment to the California Labor
3 and Workforce Development Agency.

4 **VI. APPOINTMENT AND DUTIES OF CLAIMS ADMINISTRATOR**

5 32. The Claims Administrator shall perform the following duties in connection
6 with administration of the Settlement: (1) using the data provided by Defendant to prepare the
7 Notice Materials for each Class Member, as described in section VII.A of this Settlement; (2)
8 mailing the Notice Materials to Class Members; (3) tracking non-delivered Notice Materials and
9 taking reasonable steps to re-send them to Class Members' current addresses; (4) sending out
10 reminder postcards to Class Members; (5) setting up a settlement website which contains copies of
11 all papers and orders filed in connection with preliminary and final approval, including the final
12 Settlement Agreement, Complaint, and Final Judgment; (6) tracking and timely reporting to Class
13 Counsel and Counsel for Defendant about any Opt-Outs/requests for exclusion; (7) calculating and
14 paying the amounts due to each Participating Class Member pursuant to the Settlement; (8) resolving
15 disputes (if any) by Class Members regarding the categorization in Group 1, 2 or 3, or other matters,
16 after timely notice to and consultation with Class Counsel and counsel for Defendant; (10)
17 transmitting funds as required by applicable garnishments and liens; (11) contacting all Participating
18 Class Members who have not cashed their Settlement Checks to remind them to do so before the six-
19 month deadline for doing so expires; (12) transmitting funds to resolve the PAGA claim to the State
20 of California as designated; (13) issuing payments to Class Counsel and Class Representative and
21 associated tax forms; (14) escheating the funds to the agreed upon *cy pres* recipient.

22 33. Any unresolved, material disputes between the parties regarding the Claims
23 Administrator's performance of its duties in this case will be referred to the Court, if necessary,
24 which will have continuing jurisdiction over this Settlement, pursuant to Code of Civil Procedure
25 section 664.6 and Rule 3.769(h) of the California Rules of Court, until all payments and obligations
26 contemplated by this Settlement have been fully carried out.

1 **VII. NOTICE TO THE CLASS OF THE SETTLEMENT**

2 **A. Mailing or Emailing the Notice Packets to the Class Members**

3 34. Within fifteen (15) calendar days after the Court enters its Preliminary
4 Approval Order, Defendant will provide to the Claims Administrator a database that lists, for each
5 Class Member, the individual's name, Social Security Number, last known email and/or address and
6 telephone number; last known email address, and dates of employment with Defendant during the
7 Covered Period. This database will be drawn from Defendant's payroll and other business records
8 and will be in a format acceptable to the Claims Administrator and Defendant. Defendant will
9 consult with the Claims Administrator prior to the date for providing this information to ensure that
10 the format will be acceptable to the Claims Administrator. The data provided to the Claims
11 Administrator and Class Counsel will remain confidential and will not be disclosed to anyone,
12 except as required to applicable tax authorities, pursuant to Defendant's express written consent, or
13 by order of the Court.

14 35. Within fifteen (15) calendar days after Defendant provides the Claims
15 Administrator the information stated pursuant to Paragraph 34, above, the Claims Administrator will
16 email and mail, by first-class mail (as approved by the Court), the Notice Materials to all Class
17 Members at their last known address, unless modified by any updated address information that the
18 Claims Administrator obtains in the course of administration of the Settlement. The email notice
19 will be a short form notice (as approved by the Court) notifying the Class Member of the settlement,
20 advising them that they will be receiving a long form notice by mail and directing them to the claims
21 administrator's website for the relevant documents.

22 36. The Claims Administrator will use standard devices, including the National
23 Change of Address ("NCOA") database or equivalent, to obtain forwarding addresses prior to the
24 initial mailing of the Notice Materials and will use appropriate skip tracing databases ("Skip
25 Tracing") prior to the initial mailing to maximize the probability that the Class Notice will be
26 received by all Class Members. For returned or undeliverable Class Notice Materials, the Claims
27 Administrator will utilize both the NCOA and Skip Tracing on a rolling basis during the week that
28 notices are returned to maximize the probability that the Class Notice will be received by all Class

1 Members. Class Members to whom the Class Notice Materials are resent after having been returned
2 undeliverable to the Claims Administrator shall have ten (10) calendar days thereafter, or until the
3 response deadline has expired, whichever is later, (the “Extended Response Deadline”) to mail, fax
4 or email the request for exclusion (opt out), submit a dispute, submit an objection, or elect a cash
5 payment. Notice Materials that are resent shall inform the recipient of this adjusted deadline. If a
6 Class Member’s Notice Materials are returned to the Claims Administrator more than once as non-
7 deliverable, no additional Notice Materials shall be sent. The Claims Administrator will provide the
8 parties with weekly reports regarding the Skip Tracing efforts to re-mail returned or undeliverable
9 notices.

10 37. Within thirty (30) calendar days after the Claims Administrator mails out the
11 Notice Materials, the Claim Administrator will mail out mutually acceptable reminder postcards (or
12 emails, as appropriate) to Class Members reminding them of their right to submit an Opt-Out Form,
13 object to the settlement, or dispute the Defendant’s employment records used to determine the Class
14 Members’ Gross Individual Settlement Payment.

15 38. The Claims Administrator shall provide regular reports to Class Counsel and
16 Defendant’s counsel as to the mailings of Notice Materials, Opt-Out Forms, and objections prior to
17 the close of the period in which claims can be made.

18 **B. Disputes**

19 39. Defendant’s records will be presumed correct, pursuant to California Evidence
20 Code section 630 (burden of producing evidence), *unless* a Class Member submits a dispute. In that
21 case, there shall be no presumption regarding whether the disputed records are correct or not.
22 Thereafter, the Claims Administrator will evaluate the written and documentary evidence submitted
23 by the Class Member, without regard to any presumption, utilizing its independent judgment,
24 compared to records provided by Defendant, and will make a final determination based on its
25 evaluation of all the evidence presented. In determining whether the dispute will be accepted, the
26 Claims Administrator may provide the submitted dispute and related documents to counsel for the
27 parties for review. The counsel for the parties may provide additional information to the Claims
28 Administrator to aid in the final determination. All determinations will be made no later than fifteen

1 (15) calendar days within receipt of the challenge. Any workweek dispute should be postmarked by
2 no later than sixty (60) calendar days after the initial date of mailing of the Notice Materials, subject
3 to the Extended Response Deadline set forth in Paragraph 36 above for re-mailed notices.

4 **C. Objections to Settlement**

5 40. Subject to the Extended Response Deadline set forth in Paragraph 36 above
6 for re-mailed notices, the Class Members will have sixty (60) calendar days after the date on which
7 the Claims Administrator mails the Class Notice to object to the Settlement by mailing, emailing or
8 faxing to the Claims Administrator, received by email or fax or postmarked by the sixty (60)-day
9 deadline (or Extended Response Deadline, as applicable), a written objection to the Settlement.

10 41. Nevertheless, the Court may entertain subsequently objections or oral
11 argument from a class member or his or her counsel at the final fairness hearing.

12 42. Any Class Member who has elected to opt-out of the Settlement (pursuant to
13 the procedure set forth below) may not submit an objection to the Settlement.

14 43. The Claims Administrator shall provide the Parties a copy of any objections
15 received within three (3) days of receipt. Counsel for the Parties shall file any objections and any
16 response thereto at least seven (7) calendar days before the Final Approval Hearing.

17 **D. Election Not to Participate in the Class Settlement**

18 44. In order for a Class Member to validly and effectively request exclusion from,
19 and opt out of, this Settlement, the Class Member must submit to the Claims Administrator an Opt-
20 Out Form according to the procedures set forth in the Class Notice. Substantial compliance with the
21 requirements set forth in the Class Notice will in most cases be sufficient. To the extent additional
22 information is required, the Claims Administrator will communicate with the Class Member. Subject
23 to the Extended Response Deadline set forth in Paragraph 36 above for re-mailed notices, in order to
24 be valid, the Opt-Out Form must be postmarked for delivery to the Claims Administrator no later
25 than sixty (60) calendar days after the date of mailing of the Class Notice. No request for exclusion
26 will be accepted if postmarked for delivery to the Claims Administrator after the deadline indicated.,
27 subject to the Extended Response Deadline set forth in Paragraph 36 above for re-mailed notices.

28 45. Any Class Member who does not properly and timely submit an Opt-Out

1 Form will automatically be bound by all terms and conditions of the Settlement, including its release
2 of claims, if the Settlement is approved by the Court, and be bound by the Final Approval Order,
3 regardless of whether he or she has objected to the Settlement.

4 46. A Class Member who properly and timely submits an Opt-Out Form will not
5 be bound by the Settlement, and will remain free to contest any claim brought by Plaintiff that would
6 have been barred by the Settlement, and nothing in this Settlement will constitute or be construed as
7 a waiver of any defense Defendant has or could assert against such a claim.

8 47. Plaintiff may not opt-out of the Settlement Class.

9 **E. Reports and Declaration by Claims Administrator**

10 48. By no later than fifteen (15) calendar days after expiration of the 60-day
11 deadline for submission of Opt-Out Forms, the Claims Administrator will submit to Class Counsel
12 and Counsel for Defendant a report setting forth the number of individuals who, as of that date, have
13 submitted: (a) valid Opt-Out Forms; or (b) invalid requests to be excluded from the Settlement. In the
14 event that the Claims Administrator subsequently receives an Opt-Out Form, it will promptly
15 distribute an updated report.

16 49. By no later than the date when Plaintiff files her motion for final approval of
17 the Settlement, the Claims Administrator will prepare and submit for filing in support of the motion a
18 declaration attesting to its mailing of the Class Notice, its receipt of requests for exclusion and
19 objections, and its inability to deliver the Class Notice to potential Class Members due to invalid
20 addresses. As applicable, the Claims Administrator will prepare and submit for filing in support of
21 the motion for final approval, any supplemental declaration.

22 **F. Settlement Website**

23 50. The Claims Administrator will create a settlement website which contains
24 copies of all papers and orders filed in connection with preliminary and final approval, including the
25 Class Notice Materials, the final Settlement Agreement, the Motion for Preliminary Approval, any
26 related approval orders (including all orders denying attempts to secure preliminary approval), the
27 operative Complaint, and the Final Judgment, if entered. The website will go “live” and these
28 documents will be posted no later than the date of the initial mailing of the Notice Materials and will

1 remain posted until at least the date of final approval, if that occurs. The Claim Administrator will
2 also post on its website Notice of Final Judgment, if entered.

3 **VIII. RIGHT TO RESCIND**

4 51. In the event that ten percent (10%) or more of the Class Members submit valid
5 requests not to participate in the Settlement, Defendant will have the exclusive right in its sole
6 discretion to rescind the Settlement, and all actions taken in its furtherance will be null and void.
7 Defendant must exercise this right within fifteen (15) days after the date on which the Claims
8 Administrator first informs Defendant that at least ten percent (10%) of the potential Class Members
9 have made valid requests to be excluded from the Settlement.

10 **IX. DISTRIBUTION OF THE SETTLEMENT PAYMENTS**

11 52. Defendant or Class Counsel shall serve the Claims Administrator with notice
12 of the Final Effective Date as soon as possible. No later than fifteen (15) calendar days after the
13 Final Effective Date, the Claims Administrator will prepare and provide counsel for Defendant and
14 Class Counsel with a report summarizing the total Participating Class Members and the Gross
15 Individual Settlement Payment for each Participating Class Member on that list. The sum of the
16 Gross Individual Settlement Payments due to the individuals on that list shall constitute the “Class
17 Settlement Payment.”

18 53. Defendant will cause the Gross Settlement Amount to be wired to the Claims
19 Administrator no later than fifteen (15) calendar days after the Final Effective Date. Within the
20 same fifteen (15) calendar days, Defendant also will provide the Claims Administrator a list
21 identifying all Participating Class Members who have garnishments and liens, the amounts of each
22 individual’s garnishments and liens, and the name and address of the person or entity that is entitled
23 to receive payment of such garnishments and liens.

24 54. Within fifteen (15) calendar days after the receipt of the Gross Settlement
25 Amount from Defendant, the Claims Administrator will distribute to every Participating Class
26 Member his or her Net Individual Settlement Payment. The Claims Administrator shall make
27 appropriate tax reporting and withholdings in accordance with this Agreement and applicable law
28 and regulations.

1 55. The Claims Administrator will timely remit any taxes associated with the
2 settlement payments to the proper authorities, as required by law. In addition, the Claims
3 Administrator will timely prepare and issue an IRS Form 1099-MISC and/or W-2 Form as
4 appropriate to each Participating Class Member to the extent required by law.

5 56. If any Participating Class Member does not cash his or her settlement check(s)
6 within six (6) months after issuance, fifteen (15) calendar days after the check-cashing deadline the
7 Claims Administrator shall escheat the funds to Public Counsel as the *cy pres* recipient hereto,
8 subject to Court approval. The Parties agree that this obligation shall satisfy and fully discharge
9 Defendant's obligations under California Code of Civil Procedure section 384 and the doctrines of
10 *Cy Pres* and *escheat*.

11 **X. RELEASE OF CLAIMS**

12 **A. Released Claims by Class Members Who Do Not Opt Out**

13 57. Class members who do not opt-out of the settlement will be bound by a
14 release of claims.

15 58. The release of claims includes Released Claims which could have been pled
16 based on or reasonably related to the facts and claims alleged in the Complaint, FAC, SAC, or
17 arising out of or reasonably related to the transactions and occurrences pled in the Complaint, FAC,
18 or SAC of which a Class Member does not know or suspect to exist in his or her favor against
19 Defendant as of the date of Final Approval.

20 59. As of the date the Final Approval Order is entered by the Court and except as
21 to such rights or claims as may be created by this Settlement, to the maximum extent allowed by
22 law, each Class Member who has not timely and effectively opted out will be deemed to have
23 released claims as both a matter of contract and judicial procedure as follows, which release shall be
24 incorporated into the Class Notice:

25 Once the settlement is finalized, all Class Members who have not submitted timely
26 and valid Exclusion Letters will release and discharge Defendant, their past or present
27 officers, directors, shareholders, employees, agents, principals, heirs, representatives,
28 accountants, auditors, consultants, insurers and reinsurers, and their respective

1 successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys
2 (the “Released Parties”) from all claims, demands, rights, liabilities and causes of
3 action that were or could have been asserted (whether in tort, contract or otherwise)
4 for violation of the California Labor Code, the California Business and Professions
5 Code, the applicable Industrial Welfare Commission Orders or any similar state or
6 federal law, whether for economic damages, non-economic damages, liquidated
7 damages, punitive damages, restitution, penalties, other monies, or other relief based
8 on any facts, transactions, events, policies, occurrences, acts, disclosures, statements,
9 omissions or failures to act pled or arising out of or reasonably related to the facts,
10 transactions, and occurrences pled in the Complaint, the First Amended Complaint,
11 the Second Amended Complaint, or the Third Amended Complaint which are or
12 could be the basis of claims for: (1) unpaid wages; (2) unpaid minimum wages; (3)
13 unpaid or underpaid overtime wages; (4) failure to provide meal periods and claims
14 regarding meal period premium pay; (5) failure to provide rest periods and claims
15 regarding rest period premium pay; (6) failure to reimburse expenses; (7) failure to
16 provide accurate wage statements; (8) failure to timely pay wages upon termination
17 and during employment; (9) claims for unfair competition arising from the facts
18 alleged in the operative complaints; and (10) related claims for penalties pursuant to
19 the Labor Code Private Attorneys General Act of 2004 (“PAGA) for California Labor
20 Code sections 201, 202, and 203 (collectively, the “Released Claims”). The release
21 will exclude claims for vested benefits, wrongful termination (apart from that of
22 Plaintiff Turley and any other named Plaintiff who will execute general releases of
23 claims under Civil Code section 1542), unemployment insurance, disability, workers’
24 compensation, and claims outside of the Class Period.

25 60. The Gross Individual Settlement Payment to Participating Class Members will
26 not result in any additional benefit payments beyond those provided by this Agreement to Plaintiff
27 and Participating Class Members. Participating Class Members will be deemed to have waived all
28

1 such claims for benefits premised upon the Gross Individual Settlement Payments to them, whether
2 known or unknown by them, as part of their Released Claims under this Agreement.

3 **B. Released Claims by the Class Representative**

4 61. As of the date the Final Approval Order is entered by the Court and except as
5 to such rights or claims as may be created by this Settlement, to the maximum extent allowed by
6 law, the Class Representatives will be deemed to have released claims as follows:

7 The Class Representative hereby fully and finally releases and discharges the
8 Released Parties (defined in Paragraph 59, above) from any and all of the Released
9 Claims (defined in Paragraph 59, above) and from any and all claims, charges,
10 complaints, liens, demands, causes of action, obligations, damages and liabilities,
11 known or unknown, suspected or unsuspected, that the Class Representative had, now
12 has, or may hereafter claim to have against the Released Parties arising out of, or
13 relating in any way to, the Class Representative's hiring by, employment with,
14 separation of employment with, or otherwise relating to the Released Parties, arising
15 or accruing from the beginning of time up through the date of the Final Approval
16 Hearing ("Class Representative's Released Period") with the exception of any other
17 claims which cannot be released by law ("Class Representative's Released Claims").

18 **With respect to the Class Representative's Released Claims only**, the Parties
19 stipulate and agree that, upon the Effective Date, the Class Representative waives California Civil
20 Code Section 1542, which provides:

21 A general release does not extend to claims that the creditor or
22 releasing party does not know or suspect to exist in his or her favor at
23 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.

24 **XI. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

25 62. The Parties shall submit this Joint Stipulation to the Court in support of
26 Plaintiff's Motion for Preliminary Approval and determination by the Court as to its fairness,
27 adequacy, and reasonableness. As soon as reasonably possible upon execution of this Joint
28

1 Stipulation, the Parties shall apply to the Court for the entry of an Order Granting Preliminary
2 Approval of the Settlement and Notice which shall provide for, among other things, the following:

3 a. Scheduling a final fairness and approval hearing on the question of
4 whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to
5 the Settlement Class.

6 b. Approving as to form and content the proposed Class Notice described
7 herein;

8 c. Directing the mailing of the Class Notice by first class mail to the
9 Class Members;

10 d. Preliminarily approving the Settlement;

11 e. Preliminary certifying the Class for settlement purposes only; and

12 f. Approving Alan Harris, David Garrett and Priya Mohan of Harris &
13 Ruble as Class Counsel, Plaintiffs as Class Representatives, and an administrator mutually agreed to
14 by the Parties and approved by the court, as Claims Administrator.

15 63. After the Preliminary Approval Order is entered by the Court, and prior to the
16 deadline for objections, Plaintiff shall file the motion for an award of attorneys' fees and costs to be
17 heard on the same hearing date as set by the Court for the final fairness and approval hearing.

18 **XII. DUTIES OF THE PARTIES REGARDING FINAL COURT APPROVAL**

19 64. In connection with the final approval by the Court of the Settlement, the
20 Parties will submit a proposed Order Granting Final Approval of the Class Action Settlement and
21 Final Judgment substantially in the form attached as **Exhibits C and D**, respectively, which shall
22 provide, among other things, as follows:

23 a. Approving the Settlement, adjudging the terms thereof to be fair,
24 reasonable and adequate, and directing consummation of its terms and provisions;

25 b. Approving Class Counsel's application for an award of attorneys' fees
26 and reimbursement of costs;

27 c. Approving the Class Representative's service payment;

28 d. Certifying the Settlement Class for purposes of this Settlement only;

1 e. Entering Judgment pursuant to California Rules of Court, rule 3.769(h)
2 which retains jurisdiction and permanently bars the Class Members who do not timely and validly
3 exclude themselves from the Settlement from prosecuting any and all Released Claims against the
4 Released Parties, and permanently bars the Class Representative from prosecuting any and all Class
5 Representative's Released Claims against the Released Parties. Notice of the Final Judgment shall
6 be given by Plaintiff to Defendant as set forth in the Class Notice, which notice shall satisfy the
7 requirements of California Rules of Court, rule 3.771;

8 f. Dismissing the remainder of Plaintiffs' individual claims, with
9 prejudice.

10 **XIII. EFFECT OF NON-APPROVAL**

11 65. If this Agreement is not preliminarily or finally approved by the Court and/or
12 if a Final Approval Order is not entered or if Defendant exercises the option to rescind (*e.g.*, because
13 the Court does not approve the settlement, or the opt-outs from the Class exceed five percent and
14 Defendant revokes the Agreement), this Agreement shall be null and void. In such event, (1)
15 nothing in this Agreement shall be construed as a determination, admission, or concession of any
16 issue in the Action, and nothing in this Joint Stipulation may be offered into evidence in any trial on
17 the merits of the claims asserted in the Complaint filed in the Action or in any subsequent pleading;
18 (2) the Parties expressly reserve their rights with respect to the prosecution and defense of the Action
19 as if this Agreement never existed; and (3) Defendant shall be responsible for any costs for Notice or
20 claims administration incurred by the Claims Administrator through that date. If there is any
21 reduction in the attorneys' fees or costs awards or the Class Representative Payments, such reduction
22 may be appealed but is not a basis for rendering this Agreement void, voidable and/or unenforceable.

23 **XIV. CONFIDENTIALITY PRECEDING MOTION FOR PRELIMINARY APPROVAL**

24 66. Except for disclosures authorized by Defendant or necessary to prepare the
25 motion for preliminary approval, the terms of this Settlement shall remain confidential until they are
26 presented to the Superior Court in connection with the motion for preliminary approval. The Parties
27 and their counsel shall issue no public statements and shall make no comments to media or press
28 with respect to the Action or the settlement at any time (including but not limited to press releases),

1 except as required by law. In addition, the Parties and their counsel shall not make, publish, circulate
2 or cause to be made, published or circulated any statements that represent or suggest any
3 wrongdoing by Defendant, or that this settlement or any order by the Court regarding the settlement
4 represents or implies any wrongdoing by, or any admission of liability by, Defendant, or a finding by
5 the Court of liability or wrongdoing.

6 **XV. MUTUAL FULL COOPERATION**

7 67. The Parties will fully cooperate with each other and use their best efforts,
8 including all efforts contemplated by this Settlement and any other efforts that may become
9 necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement in
10 accordance with the terms of the parties' memorandum of understanding, including but not limited
11 to, executing such documents and taking such other action as may reasonably be necessary to obtain
12 preliminary and final approval of this Settlement and to implement its terms.

13 **XVI. NO PRIOR ASSIGNMENTS**

14 68. The Parties represent, covenant, and warrant that they have not directly or
15 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
16 person or entity any portion of any claims, causes of action, demands, rights and liabilities of every
17 nature and description released under this Settlement.

18 **XVII. NOTICES**

19 69. Unless otherwise specifically provided by this Settlement, all notices,
20 demands or other communications given under this Settlement will be in writing and be deemed to
21 have been duly given as of the third business day after mailing by United States registered or
22 certified mail, return-receipt requested, addressed as follows:

23 **To Plaintiff and the Settlement Class:**

24 ALAN HARRIS
25 PRIYA MOHAN
26 DAVID GARRETT
27 HARRIS & RUBLE
28 655 North Central Avenue, 17th Floor
Glendale, CA 91203
Telephone: 323.962.3777

David Harris
North Bay Law Group

1 116 E. Blithedale Ave., Ste. 2
2 Mill Valley, CA 94941
3 Telephone: (415) 388-8788
4 Facsimile: (415) 388-8770
5 dsh@northbaylawgroup.com

6 **To Defendant:**

7 Angela C. Agrusa
8 angela.agrusa@us.dlapiper.com
9 Levi W. Heath
10 levi.heath@us.dlapiper.com
11 Steve L. Hernández
12 Steve.hernandez@dlapiper.com
13 DLA PIPER LLP (US)
14 2000 Avenue of the Stars
15 Suite 400 North Tower
16 Los Angeles, California 90067-4704
17 Tel: (310) 595-3000
18 Fax: (310) 595-3300

19 MESSNER REEVES LLP
20 Charles C. Cavanagh
21 1430 Wynkoop Street, Suite 300
22 Denver, Colorado 80202
23 Telephone: 303.623.1800
24 Facsimile: 303.623.0552

25 **XVIII. CONSTRUCTION**

26 70. This Settlement is the result of lengthy, arms-length negotiations between the
27 Parties. This Settlement will not be construed in favor of or against any Party by reason of the extent
28 to which any Party or her or its counsel participated in the drafting of this Settlement.

29 **XIX. CAPTIONS AND INTERPRETATIONS**

30 71. Paragraph and section titles, headings, or captions contained in this Settlement
31 are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
32 describe the scope of this Settlement or any of its provisions. Each term of this Settlement is
33 contractual and not merely a recital, except for those set forth in Section I, above.

34 **XX. MODIFICATION**

35 72. The material terms of this Settlement may not be changed, altered, or
36 modified, except in writing and signed by the Parties and approved by the Court. This Settlement
37 may be amended through Stipulation signed by counsel for all Parties to correct typographical errors
38 or to address non-material administrative issues as directed by the Court. This Settlement may not

1 be discharged except by performance in accordance with its terms or by a writing signed by the
2 Parties.

3 **XXI. APPLICABLE LAW**

4 73. All terms and conditions of this Agreement will be governed by and
5 interpreted according to the laws of the State of California, without giving effect to any conflict of
6 law or choice of law principles.

7 **XXII. INTEGRATION CLAUSE**

8 74. This Settlement and all the attached Exhibits, which by this reference are
9 incorporated into this Settlement, constitutes the entire agreement between the Parties relating to the
10 Settlement and transactions contemplated by the Settlement. All prior or contemporaneous
11 agreements, understandings, representations, and statements, whether oral or written and whether by
12 a Party or a Party's counsel, are merged into this Settlement. No rights under this Settlement may be
13 waived except in writing.

14 **XXIII. BINDING ON ASSIGNS**

15 75. This Settlement will be binding upon and will inure to the benefit of the
16 Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

17 **XXIV. CLASS MEMBER SIGNATORIES**

18 76. It is agreed that because the members of the Class are so numerous, it is
19 impossible or impractical to have each Class Member who does not timely and validly opt-out
20 execute this Settlement. The Class Notice will inform all Class Members of the binding nature of
21 the release contained herein will have the same force and effect as if this Settlement were executed
22 by each Class Member who does not timely and validly opt-out.

23 **XXV. COUNTERPARTS**

24 77. This Settlement may be executed in counterparts, and when each Party has
25 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,
26 when taken together with other signed counterparts, will constitute one Settlement, which will be
27 binding upon and effective as to all Parties.
28

1 78. This Settlement may be signed by facsimile signature or digital signature,
2 each of which will have the same force and effect as an original signature.

3 **XXVI. PARTIES' AUTHORITY TO SIGN**

4 79. The signatories to this Settlement hereby represent that they are fully
5 authorized to enter into this Settlement on behalf of themselves or their respective principals.

6 **EXECUTION BY PARTIES AND COUNSEL**

7 The Parties and their counsel hereby execute this document to evidence their
8 acceptance of and agreement to the Settlement.

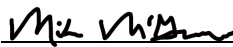
9
10 Dated: _____, 2020

TANIKA TURLEY
Plaintiff

11
12
13
14 Dated: _____, 2020


ALAN HARRIS
PRIYA MOHAN
DAVID GARRETT
HARRIS & RUBLE
Attorneys for Plaintiff and Settlement Class

15
16
17
18
19 Dated: September 4 _____, 2020



CHIPOTLE INC.
Defendant
By: Michael M. McGawn,
Deputy General Counsel - Operations

20
21
22
23
24 Dated: September 4 _____, 2020



ANGELA AGRUSA
LEVI W. HEATH
STEVE L. HERNÁNDEZ
DLA PIPER LLP (US)
Attorneys for Defendant

1 78. This Settlement may be signed by facsimile signature or digital signature,
2 each of which will have the same force and effect as an original signature.

3 **XXVI. PARTIES' AUTHORITY TO SIGN**

4 79. The signatories to this Settlement hereby represent that they are fully
5 authorized to enter into this Settlement on behalf of themselves or their respective principals.

6 **EXECUTION BY PARTIES AND COUNSEL**

7 The Parties and their counsel hereby execute this document to evidence their
8 acceptance of and agreement to the Settlement.

9
10 Dated: 9/4/2020, 2020

DocuSigned by:
Tanika Turley
7A0A25AE485E490...
TANIKA TURLEY
Plaintiff

11
12
13
14 Dated: 9/4/2020, 2020

DocuSigned by:
David garrett
3D6B587E9643467...
ALAN HARRIS
PRIYA MOHAN
DAVID GARRETT
HARRIS & RUBLE
Attorneys for Plaintiff and Settlement Class

15
16
17
18
19 Dated: _____, 2020

CHIPOTLE INC.
Defendant
By: Roger Theodoredis, CLO/General Counsel

20
21
22
23 Dated: _____, 2020

ANGELA AGRUSA
LEVI W. HEATH
STEVE L. HERNÁNDEZ
DLA PIPER LLP (US)
Attorneys for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 9/4/2020, 2020

DocuSigned by:
David Harris
5A5DB35CB2914AC...

DAVID HARRIS
NORTH BAY LAW GROUP
Attorneys for Plaintiff and Settlement Class

Exhibit A

IMPORTANT LEGAL NOTICE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

TANIKA TURLEY and CHRISTOPHER THOMPSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

CHIPOTLE SERVICES, LLC,

Defendants.

CASE NO. CGC-15-544936

**NOTICE OF PRIVATE ATTORNEY
GENERAL ACT (“PAGA”) AND
CLASS ACTION SETTLEMENT
AND SETTLEMENT HEARING**

TO: ALL CURRENT AND FORMER NON-EXEMPT EMPLOYEES OF DEFENDANT THAT WERE HIRED BEFORE AUGUST 1, 2014, AND WORKED IN CALIFORNIA AT ANY TIME FROM OCTOBER 1, 2014 THROUGH AUGUST 1, 2020.

**A PROPOSED SETTLEMENT AFFECTS YOUR RIGHTS.
PLEASE READ THIS NOTICE CAREFULLY.**

A proposed settlement of the above-captioned class action (“the Litigation”) filed in the San Francisco County Superior Court (“the Court”) has been reached by the parties and has been granted preliminary approval by the Court supervising the Litigation.

The Maximum Gross Settlement Amount is \$1,750,000. Plaintiffs will ask that the \$1,750,000 cash payment be used to cover up to \$583,333 in attorney’s fees, up to \$25,000 in litigation costs, an estimated \$50,000 in settlement administration costs, up to \$2,500 in a total enhancement payment to the class representative, and \$50,000 to the Labor and Workforce Development Agency as penalties under the California Labor Code. The remainder of the cash payment, estimated to be \$1,039,167, would then be distributed to the Class, estimated to include approximately 7,000 members, based on the number of workweeks worked in the Class Period.

The proposed settlement will resolve all claims for “Settlement Class Members,” defined as follows:

The “Class Member” shall consist of any current or former employee of Chipotle who was hired before August 1, 2014 and who worked in California at any time between October 1, 2014 and August 1, 2020 (“Class Period”). Each person in the class is a “Class Member,” and all such persons are referred to as the “Class.”

Excluded from the Class are any California employees that are members of the collective action in the currently pending *Turner v. Chipotle Mexican Grill, Inc.*, Case No. 1:14-cv-02612-JLK-CBS or who have filed individual arbitrations related to that action, as well as any other person who has a pending arbitration or lawsuit as of August 1, 2020.

The Court has ordered that this Notice of Class Action Settlement and Settlement Hearing (the “Class Notice”) be sent to you because you may be a Settlement Class Member. The purpose of

this Class Notice is to inform you of the settlement of this Litigation and your legal rights under the Amended Class Action Settlement Agreement and Release of Claims (the “Settlement Agreement”).

PARTICIPATION

3. To receive a payment from the settlement, you need not take any action, except that you should update the Claims Administrator with your new address if you move. If you do nothing, and the settlement receives final approval, you will be mailed a check from the settlement at your address of record. If the Court grants final approval of the Settlement, the Court will enter judgment, the Settlement will bind all Class Members who have not opted out, and the judgment will bar all Class Members from bringing any claims released in the Settlement. The release is described below.

EXCLUSIONS

4. The only way for you to be part of any other lawsuit or arbitration against Chipotle involving the legal claims that are being released in this settlement (see paragraph 19) is to submit the enclosed Request for Exclusion from Class Action (an “Exclusion Form”) to the Court-appointed settlement administrator (the “Settlement Administrator”) postmarked no later than **[Exclusion Deadline], 2020 [60 days from mailing]**. This is called an “Opt Out”. Alternatively, you can submit your own written request for exclusion. Detailed instructions for requesting exclusion are set forth in paragraph 27 below.

OBJECTIONS

5. If you wish to object to the settlement, you must submit an Objection to the Settlement Administrator (an “Objection”), and supporting papers, to the Settlement Administrator (who will send copies to the Court and counsel) postmarked no later than **[Objection Deadline], 2020 [60 days from mailing]**. Alternatively you can appear at the final approval hearing for the settlement. Detailed instructions for submitting an objection are set forth below.

PRELIMINARY APPROVAL

6. A hearing on the final determination of the adequacy, reasonableness and fairness of the settlement will be held **at ____ a.m./p.m. on _____, 2020** in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102. **You are not required to attend this hearing.**

SUMMARY OF LITIGATION

7. On March 25, 2015, Plaintiff Tanika Turley (“Turley”) filed a complaint against Chipotle with class claims under the California Labor Code and Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2699, 2699.3, and 2699.5. Turley alleged that Chipotle had failed timely to pay wages – including all earned wages, final wages, and wages owing on account of interrupted meal periods and rest breaks – to its employees. Turley has also alleged unfair business practices, failure to reimburse expenses, failure to keep accurate records

and that Chipotle provided improper wage statements to them and other current and former Chipotle employees (the “Allegations,” collectively).

On or about May 23, 2018, Turley filed a Motion for Class Certification for wage statements, meal breaks, rest breaks and continuing wages. On November 2, 2018, the Court granted certification of a “wage statement subclass, narrowed to individuals who did not sign arbitration agreements”. The Court ordered the parties to “confer on the precise wording of the class definition and should consider whether it includes (i) individuals hired before August 1, 2014 or October 2, 2014, and (ii) whether it ends March 30, 2015, or some other date, e.g. in April, 2015.” The Court denied the Motion for Class Certification for the meal breaks, rest breaks and continuing wages. Subsequently, the Parties agreed that the class definition should include individuals hired before August 1, 2014 and end on March 30, 2015.

8. After an exchange of relevant information, Chipotle and Turley agreed to enter into private mediation before a mediator to try and resolve the claims. A mediation was held on October 1, 2019, and the parties reached the settlement that was denied preliminary approval by the Court. Based upon the guidance of the Court, in consultation with the mediator, and following a Mandatory Settlement Conference, the parties entered into a revised settlement, which is memorialized in the Settlement Agreement that is on file with the Court, and whose terms are generally summarized in this Class Notice.

9. You have received this Class Notice because Chipotle records show you were employed as a Settlement Class Member and your rights may be affected by this settlement.

POSITIONS OF THE PARTIES

10. Chipotle has denied and continues to deny each of the Allegations in the Litigation. Chipotle contends that all of its employees have been provided meal and rest breaks and compensated in compliance with the law, and that its conduct was not willful with respect to any alleged failure to pay any penalties. Chipotle alleges that all employees hired after August 1, 2014, executed valid arbitration agreements. Chipotle has repeatedly asserted and continues to assert defenses to the Allegations in the Litigation, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Litigation. Neither the settlement nor any action taken to carry out the settlement may be construed as or may be used as an admission, concession or indication by or against Chipotle of any fault, wrongdoing or liability whatsoever, including any concession that certification of a class other than for purposes of this settlement would be appropriate in this or any other case.

11. Counsel for the Settlement Class (“Class Counsel”) has extensively investigated and researched the facts and circumstances underlying the issues raised in the Litigation, and the law applicable thereto. Class Counsel recognizes the expense and length of continued proceedings necessary to continue the Litigation against Chipotle through trial and through any possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, including the risk that the class might not be certified, as well as the difficulties and delays generally inherent in such litigation.

12. Class Counsel is also aware of the burdens of proof necessary to establish liability for the Allegations, of Chipotle’s defenses thereto, and of the difficulties in establishing damages for the

Settlement Class Members. Class Counsel has also taken into account the extensive settlement negotiations conducted by the parties. Based on the foregoing, Class Counsel believes the settlement is fair, adequate and reasonable and in the best interests of the Settlement Class Members.

13. Chipotle has also extensively investigated and researched the facts and circumstances underlying the issues raised in the Litigation, and the law applicable thereto. Although Chipotle believes it has meritorious defenses to the Allegations, Chipotle has concluded that the further defense of this Litigation would be lengthy and expensive for all parties. Chipotle has, therefore, agreed to settle this Litigation in the manner and upon the terms set forth in the Settlement Agreement to put to rest all claims that are or could have been asserted against it in the Litigation.

14. The Court has not ruled on the merits of the Settlement Class Members' claims. The Court has certified the Settlement Class for settlement purposes only.

PRELIMINARY APPROVAL OF THE SETTLEMENT

15. On [*date of preliminary approval*], for purposes of the settlement, the Court held a preliminary approval hearing during which it preliminarily certified a Settlement Class defined as follows:

The Class shall consist of any current or former employee of Chipotle who was hired before August 1, 2014 and who worked in California at any time between October 1, 2014 and August 1, 2020 ("Class Period"). Each person in the class is a "Class Member," and all such persons are referred to as the "Class."

Excluded from the Class are any California employees that are members of the collective action in the currently pending *Turner v. Chipotle Mexican Grill, Inc.*, Case No. 1:14-cv-02612-JLK-CBS or who have filed individual arbitrations related to that action, as well as any other person who has a pending arbitration or lawsuit as of August 1, 2020.

16. At the preliminary approval hearing, the Court appointed the following attorneys as Class Counsel to represent the Settlement Class in this Litigation:

Alan Harris
David Garrett
HARRIS & RUBLE
655 N. Central Ave., 17th Floor
Glendale, CA 91203
Telephone: (323) 962-3777
Email: HarrisA@harrisandruble.com
DGarrett@harrisandruble.com

David Harris
NORTH BAY LAW GROUP
116 E. Blithedale Ave., Ste. 2
Mill Valley, CA 94941
Telephone: (415) 388-8788
Email: dsh@northbaylawgroup.com

17. If you are a Settlement Class Member, you will be bound by the settlement if it is approved, unless you exclude yourself in the manner described below.

SUMMARY OF SETTLEMENT TERMS

18. Settlement Amount. The Settlement Agreement provides that Chipotle will pay the Maximum Gross Settlement Amount of \$1,750,000.00. Plaintiffs will ask that the \$1,750,000 cash payment be used to cover up to \$583,333 in attorney's fees, up to \$25,000 in litigation costs, an estimated \$50,000 in settlement administration costs, up to \$2,500 in total enhancement payments to the class representative, and \$50,000 to the Labor and Workforce Development Agency as penalties under the California Labor Code. The remainder of the cash payment, estimated to be \$1,039,167, would then be distributed to the Class, estimated to include approximately 7,000 members, based on the number of workweeks worked in the Class Period. Therefore, the average check to be mailed to each Settlement Class Member would be \$148 each.

After the following Court-approved deductions from the Maximum Gross Settlement Amount, the amount remaining will be distributed to Settlement Class Members pursuant to a Court-approved plan of allocation based on the number of weeks worked ("Workweeks") during the Class Period, as detailed below:

(a) Deductions. The following deductions will be made from the Maximum Gross Settlement Amount:

(i) Settlement Administration. The Court has tentatively approved a payment to the Settlement Administrator, [TBD], currently estimated not to exceed \$50,000, as settlement administration expenses to notify the Class and process corrections, objections, and exclusions.

(ii) Attorney's Fees and Expenses. The Court has appointed Harris & Ruble as Class Counsel. Class Counsel has been prosecuting the Litigation on behalf of the Settlement Class on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. Class Counsel has requested from the Court payment not to exceed 33.33% of the total settlement amount for attorney's fees (\$583,333). Class Counsel has also requested from the Court reimbursement of the actual expenses they have advanced, currently estimated in an amount no more than \$25,000. Payments will be subject to the Court's approval and will be deducted from the settlement amount. The amounts approved will constitute full compensation for all legal fees and expenses of Class Counsel in the Litigation, including any work they do in the future. These attorney's fees are within the range of fees awarded to Class Counsel under similar circumstances in litigation of this type. Settlement Class Members are not personally responsible for any fees or expenses.

(iii) Enhancement Payment to Class Representative Plaintiff. Class Counsel will also seek an "Enhancement Payment" for Plaintiff Turley for acting as the representative on behalf of the Settlement Class in the amount of \$2,500. If approved by the Court, this amount will be paid from the settlement amount to compensate the Plaintiff as class representative plaintiff for services she provided on behalf of the Settlement Class, including initiating and prosecuting this Litigation on behalf of the Settlement Class, as well as reviewing documents and attending strategy sessions and other meetings with Class Counsel.

(iv) PAGA Payment. A net payment of \$50,000 shall be allocated to pay all applicable penalties under California Labor Code's Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2699, 2699.3, and 2699.5.

(b) Payment to Final Settlement Class Members: Plan of Allocation. The balance of the Maximum Gross Settlement Amount, after the deductions described above, will be available for distribution to final Settlement Class Members.

Class Members do not have to submit claims forms or take any action to participate.

Class Members who do not affirmatively opt-out of the settlement will receive a check for a pro-rata share of the Net Settlement Amount based on pay periods worked during the Class Period. All checks shall be good for 180 days from the date of mailing. Following the expiration of 180 days, the Claims Administrator shall inform the parties of the total amount of uncashed checks. If the amount of uncashed checks exceeds \$27,500, then a second round of checks will be mailed to any Settlement Class Member who cashed their checks during the first round. The amount of each check in the Second Distribution shall be equal to a pro rata share of the amount of Uncashed Checks after deductions for postage and handling by the Claims Administrator. Following the Second Distribution, if any, the parties propose that all checks not cashed within 180 days of payment shall be paid to the California pro bono law firm, Public Counsel, as the *cy pres* recipient, subject to Court approval, in accordance with Code of Civil Procedure §384, subd. (b).

(c) Payments for Employee and Employer Taxes. The allocation of payment of claims and tax treatment of such claims shall be 25% wages, 25% interest, and 50% penalties. From the portion which is allocated as wages shall be withheld the employee's share of payroll and income taxes and all other applicable deductions or withholding required by law or expressly authorized by the Class Member, including payments of any garnishments and liens. IRS Forms 1099 and W2 (and any equivalent California form) will be distributed to the final Settlement Class Members (those who have not excluded themselves) reflecting the payments they receive under the settlement. Interest and penalties shall be reported as such (Form 1099 reporting) to the taxing authorities. Final Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the settlement. Final Settlement Class Members are solely responsible for, and waive any claim against Chipotle arising from, any and all tax liability accruing from the receipt of these settlement payments.

19. Release. If finally approved by the Court, the settlement will be binding on all Class Members who do not exclude themselves from the settlement and will bar them from bringing certain claims against Chipotle described below. Effective as of the Final Effective Date, the settlement shall resolve and the class shall release all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, fees and costs that were stated in the Complaints and any Amended Complaints and/or those based upon the factual allegations in the operative Complaints to the maximum extent allowed by law, during the Class Period as follows:

Once the settlement is finalized, all Class Members who have not submitted timely and valid Exclusion Letters will release and discharge Defendant, their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (the "Released Parties") from all claims, demands, rights, liabilities and causes of action that were or could have been asserted (whether in tort, contract or otherwise) for violation of the California Labor Code, the California Business and Professions Code, the applicable Industrial Welfare

Commission Orders or any similar state or federal law, whether for economic damages, non-economic damages, liquidated damages, punitive damages, restitution, penalties, other monies, or other relief based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act pled or arising out of or reasonably related to the facts, transactions, and occurrences pled in the Complaint, the First Amended Complaint, Second Amended Complaint or the Third Amended Complaint, which are or could be the basis of claims for: (1) unpaid wages; (2) unpaid minimum wages; (3) unpaid or underpaid overtime wages; (4) failure to provide meal periods and claims regarding meal period premium pay; (5) failure to provide rest periods and claims regarding rest period premium pay; (6) failure to reimburse expenses; (7) failure to provide accurate wage statements; (8) failure to timely pay wages upon termination and during employment; (9) claims for unfair competition arising from the facts alleged in the operative complaints; and (10) related claims for penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA) for California Labor Code sections 201, 202, and 203 (collectively, “Released Claims”). The release will exclude claims for vested benefits, wrongful termination (apart from that of Plaintiff Turley and any other named Plaintiff who will execute general releases of claims under Civil Code section 1542), unemployment insurance, disability, workers’ compensation, and claims outside of the Class Period. The Gross Individual Settlement Payment to Participating Class Members will not result in any additional benefit payments beyond those provided by this Agreement to Plaintiff and Participating Class Members. Participating Class Members will be deemed to have waived all such claims for benefits premised upon the Gross Individual Settlement Payments to them, whether known or unknown by them, as part of their Released Claims under this Agreement.

20. Condition of Settlement. This settlement is conditioned upon the Court entering a final approval order at or following the final approval hearing approving the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Settlement Class.

PROCEDURE FOR SEEKING MONETARY RECOVERY

21. **To receive a payment from the settlement, you need not take any action, except that you should update the Claims Administrator with your new address if you move. If you do nothing, you will receive either a check from the settlement if it receives final approval. Settlement Class Members will receive a cash payment based upon their Workweeks. If the Court grants final approval of the Settlement, the Court will enter judgment, the Settlement will bind all Class Members who have not opted out, and the judgment will bar all Class Members from bringing any claims released in the Settlement.**

22. A Workweek Correction Form is enclosed. (If you need an extra copy, contact the Settlement Administrator at the address or telephone number above). If any information in your Form is incorrect, please make corrections and mail the completed Form postmarked by **[60 days from mailing]** to the Settlement Administrator at the following address:

Turley v. Chipotle
c/o [____]
P.O. Box [____]
[Address]
[Phone Number]

[Fax Number]

23. For example, if your address is incorrect, please indicate your correct address. Also, please provide your telephone number and any other requested information if it is not already filled in. If you wish to have confirmation that the Settlement Administrator has received your Form, please send your Form to the Settlement Administrator by certified U.S. Mail with a return-receipt request. **You need not do anything or return the Form if all the information is correct.**

24. If you believe the number of Workweeks listed on the Correction Form is incorrect, you may indicate what you believe is the correct number of Workweeks on the Correction Form. You may also send any documents or other information that support your belief. The Settlement Administrator will resolve any dispute regarding the dates you worked for, based on Chipotle records and any information that you provide. The number of Workweeks is presumed to be correct unless the documents you submit are company records from Chipotle.

25. If you are a Class Member and you do not elect to exclude yourself from this settlement through the exclusion procedure described in paragraph 27 below, you will be bound by all of the provisions of the Settlement Agreement, including a full release of claims that will prevent you from separately suing Chipotle or any of the other parties released by the Settlement Agreement for the matters being settled in this case (see paragraph 19 of this Notice). The checks hereunder will be mailed approximately three months after final approval, if granted. The checks will be negotiable for 180 days after they are issued.

26. AGAIN, IF YOU DO NOTHING, YOU WILL RECEIVE A SHARE OF THE SETTLEMENT AMOUNT IF GRANTED FINAL APPROVAL, AND YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE.

PROCEDURE FOR EXCLUDING YOURSELF FROM THE SETTLEMENT

27. Class Members may exclude themselves from the Settlement Class by submitting an enclosed copy of the Exclusion Form to the Settlement Administrator at the address listed in paragraph 22, above, postmarked on or before [redacted], 2020 [last day of Exclusion Period]. To exclude yourself, you must complete the Exclusion Form in its entirety, or in the alternative, submit a letter to the Settlement Administrator which includes your name (and former names, if any), current address, telephone number and a signed statement in substantially the same form as follows: "Please exclude me from the proposed Settlement Class in *Turley v. Chipotle*, Case No. CGC-15-544936." Persons who submit valid and timely Exclusion Forms will not participate in the settlement and will not be bound by either the settlement or the Court's final approval order in this Litigation. Do not file the Exclusion Form with the Court.

PROCEDURE FOR OBJECTING TO THE SETTLEMENT

28. If you are a Settlement Class Member and believe that the Settlement Agreement should not be finally approved by the Court for any reason, or if you object to the proposed Enhancement Payments to the Class Representative Plaintiffs or the attorneys' fees and expenses to Class Counsel and want the Court to consider your objection, then on or before [redacted] 2020, [last day of Exclusion Period] you must mail, email or fax a written objection in which you state

the basis of your objection with to Settlement Administrator at the address listed in paragraph 22. Any written objection must include your name, signature and address, and a statement of the basis for each objection asserted. All objections or other correspondence must state the name of the case, *Turley v. Chipotle*, Case No. CGC-15-544936. Any Settlement Class Member who has elected not to participate by following the procedure set forth above in paragraph 27, may not submit an objection to the Settlement.

29. You may also appear at the hearing scheduled for _____ a.m./p.m. on _____, 2020 in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street, San Francisco, California, 94102, to have your objection heard by the Court. If you object to the settlement, you will remain a Settlement Class Member, and if the Court approves the settlement, you will be bound by the terms of the Settlement Agreement in the same way as Settlement Class Members who do not object. An objecting party shall *not* be required to do either of the following: (1) to appear, either personally or through counsel, at the hearing on the motion for final approval for that party's objection to be considered; or (2) to file or serve a notice of intention to appear at the hearing on the motion for final approval of the settlement.

HEARING ON THE SETTLEMENT

30. Notwithstanding the statements above, **you are not required to attend the final approval hearing.**

31. Again, the final approval hearing on the adequacy, reasonableness and fairness of the settlement will be held at _____ a.m./p.m. on _____, 2020 in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street San Francisco, California, 94102. Either Class Counsel or the Settlement Administrator will give notice to any objecting party of any continuance of the hearing of the motion for final approval.

32. You may object, personally or through an attorney, to the settlement by mailing your objection and following the procedures outlined in paragraphs 28-29, above.

33. Any Settlement Class Member who does not object in the manner provided above shall be deemed to have approved the settlement and to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the settlement.

CHANGE OF ADDRESS

34. If you move after receiving this Class Notice, if it was misaddressed or if for any reason you want your payment or future correspondence concerning this Litigation and the settlement to be sent to a different address, you should send your current preferred address to the Settlement Administrator.

ADDITIONAL INFORMATION

35. This Class Notice is only a summary of the Litigation and the Settlement Agreement. For a more detailed statement of the matters involved in the Litigation and the settlement, you may

refer to the pleadings, the Settlement Agreement, and other papers filed in the Litigation (including the Plaintiff's motion for preliminary approval of the Settlement Agreement and supporting papers), which may be inspected at the Office of the Clerk of the Superior Court of California, County of San Francisco, located at Civic Center Courthouse, 400 McAllister Street, San Francisco, California, 94102, during regular business hours of each court day. The case file may also be viewed online and downloaded for free at the court's website at <https://webapps.sftc.org/captcha/captcha.dll?referrer=https://webapps.sftc.org/ci/CaseInfo.dll?>. The Settlement Agreement is attached as Exhibit 1 to the Declaration of Alan Harris filed on _____, 2020. The Settlement Administrator will also post relevant documents on its website at _____, including the Settlement Agreement, the Court Order(s) and Final Judgment, if entered.

36. All inquiries by Settlement Class Members regarding this Class Notice and/or the Settlement Agreement, should be directed to the Settlement Administrator or Class Counsel.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR JUDGE WITH INQUIRIES.

<p>WORKWEEK & ADDRESS CORRECTION FORM Chipotle Services, LLC San Francisco County Superior Court – Case No. CGC-15-544936</p>
--

To be mailed a payment from this settlement, you need not take any action. You do not need to return this Workweek Correction Form. If you do nothing, a payment from the settlement amount will be sent to you at the address below if the settlement receives final approval. You will also give up your rights to be part of any other lawsuit involving the same legal claims as the ones in this Litigation, and will release all such claims. You need only return this Workweek & Address Correction Form if you wish to (i) correct your mailing information below or (ii) challenge the accuracy of the information below regarding your total pay periods worked during the Class Period. You should also update the Claims Administrator with your new address if you move.

THE DEADLINE FOR SUBMITTING THIS FORM IS [INSERT DATE 60 DAYS FROM MAILING OF NOTICE]. You may contact the Claims Administrator at a later date to update address information, but a delay in updating your address may result in mail or payments being sent to the wrong address.

I. SETTLEMENT CLASS MEMBER IDENTIFICATION

Please Make any Name/Address Corrections Below:

<<First>> <<Last>>
 <<Address1>>
 <<Address2>>
 <<City>> <<State>> <Zip>>

Please correct my address only. I do not dispute my workweeks. (Check box and sign here if you are only correcting your address.)

Dated: _____

 (Signature)

II. GENERAL INFORMATION

The Class includes all current and former non-exempt employees of Defendant, who were hired *before* August 1, 2014 and who worked in California at any time during the Class Period. “Class Period” shall be from October 1, 2014 through August 1, 2020.

YOU WILL SUFFER NO RETALIATION OR ADVERSE ACTION FOR PARTICIPATING IN THIS SETTLEMENT.

This final approval hearing on the adequacy, reasonableness and fairness of the settlement will be held at [] a.m./p.m. on [], 2020 in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102. **You are not required to attend this hearing.**

III. YOUR CLAIM INFORMATION

According to payroll records maintained by Chipotle, the total number of pay periods you worked at Chipotle as an employee in California during the Covered Period (“Workweeks”), is: Workweeks.

Based on your workweeks, the total class members’ workweeks, and the net settlement fund, we estimate your share of the settlement will be approximately \$ if you do not submit a Workweek Correction Form.

IV. IF YOU DISPUTE THE INFORMATION ABOVE

Please complete this Section only if you disagree with the information listed in Section III above.

I dispute the Workweek information in Section III. I believe I worked Workweeks at Chipotle during the time frame referenced above.

If there is a dispute about whether the Workweek information set forth in Section III is accurate, the dispute will be resolved by the Settlement Administrator. If you believe the number of Workweeks as listed in Section III is incorrect, please check the box below and send this signed and completed Form along with copies of any documents (please retain the originals for your records) that support your belief that the information set forth above is incorrect to the Settlement Administrator at the following address:

Turley v. Chipotle
c/o [Claims Administrator Name]
P.O. Box [____]
[Address]
[Phone Number]
[Fax Number]

Again, you need not take any action to participate in the settlement and you will be bound by the other provisions of the Settlement Agreement approved by the Court. If you make any corrections or dispute the number of Workweeks shown, this Workweek Correction Form will be deemed submitted by you when sent by first class mail and postmarked prior to the deadline. Do not submit this form to the Court.

I dispute my workweeks.

I declare that the foregoing information is true and accurate, and that I have read and understand the Class Notice that was mailed with this Workweek & Address Correction Form.

Dated: _____

(Signature)

REQUEST FOR EXCLUSION FROM CLASS ACTION

TANIKA TURLEY and CHRISTOPHER THOMPSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

CHIPOTLE SERVICES, LLC; a Colorado business entity,

Defendants.

CASE NO. CGC-15-544936

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY

SUBMIT THIS FORM NO LATER THAN _____, 2020 [60 days from mailing] ONLY IF YOU DO NOT WISH TO PARTICIPATE IN THIS SETTLEMENT. THIS EXCLUSION FORM SHOULD BE MAILED TO THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING ADDRESS:

Turley v. Chipotle

c/o [Claims Administrator Name]

P.O. Box [_____]

[Address]

[Number]

DO NOT SUBMIT THIS EXCLUSION FORM IF YOU WISH TO PARTICIPATE IN THIS SETTLEMENT. DO NOT FILE THIS EXCLUSION FORM WITH THE COURT.

I do not wish to participate in this class action and choose to exclude myself from this settlement. I understand that by excluding myself, I will be unable to receive any benefits under the Settlement.

Signature

Date

Print Name

List any former names

Address

City, State, Zip Code

[PROPOSED] EMAIL NOTICE TO CLASS MEMBERS

Sender Name: [Phoenix] Settlement Administrators

Subject: Class Action Settlement Notice - Turley v. Chipotle

Dear Class Member,

You are receiving this email because you may be a member of a class on whose behalf this class action lawsuit has been brought.

You have the right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves the settlement and after objections and appeals are resolved, a Claims Administrator appointed by the Court will distribute payments provided in the settlement.

The Class Notice Settlement Materials are being mailed to you at your last known address. The Class Notice Settlement Materials explain the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive them. If you **do not** receive a notice in the mail, or if your address has changed since you worked for Chipotle, please reply to this email to let the Claims Administrator know your current address so that you may receive the Class Settlement Notice Materials.

Additionally, copies of all papers filed in connection with preliminary and final approval, including the Proposed Settlement, the Motion for Preliminary Approval of Class Action Settlement, Order Granting Preliminary Approval to the Settlement, any orders denying attempts to secure preliminary approval, other California cases relating to Chipotle, and Class Notice Settlement Materials may be viewed on the settlement administrator's website at: <<Insert web address>>.

The Court in charge of this case is the San Francisco Superior Court, and the case is known as *Turley v. Chipotle Services, LLC*, Case No. CGC-15-544936. You can view all of the case pleadings without charge on the website for the Superior Court at <https://www.sfsuperiorcourt.org/online-services>.

If you have any questions or desire any additional information, please contact the Claims Administrator at [800-523-5773].

Thank you.

Settlement Administrator
[Phoenix Settlement Administrators]

Exhibit B

1 Alan Harris (SBN 146079)
David Garrett (SBN 160274)
HARRIS & RUBLE
2 655 North Central Avenue, 17th Floor
Glendale, CA 91203
3 Telephone: (323) 962-3777
Facsimile: (323) 962-3004
4 aharris@harrisandruble.com

5 David Harris (SBN 215224)
NORTH BAY LAW GROUP
6 116 E. Blithedale Ave., Ste. 2
Mill Valley, CA 94941
7 Telephone: (415) 388-8788
Facsimile: (415) 388-8770
8 dsh@northbaylawgroup.com

9 Attorneys for Plaintiffs

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13 TANIKA TURLEY and CHRISTOPHER
14 THOMPSON, individually and on behalf of
all others similarly situated,

15 Plaintiff,

16 v.

17 CHIPOTLE SERVICES, LLC; a Colorado
18 business entity, and DOES 1 through and
including DOE 100,

19 Defendants.
20

Case No. CGC-15-544936

[Hon. Anne-Christine Massullo, Dept. 304]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
AMENDED CLASS ACTION
SETTLEMENT**

Date: September 23, 2020

Time: 1:30 p.m.

Dept.: 304

Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

1 Angela C. Agrusa (SBN 131337)
angela.agrusa@us.dlapiper.com
2 Levi W. Heath (SBN 220854)
levi.heath@us.dlapiper.com
3 Steve L. Hernández (SBN 229065)
Steve.hernandez@dlapiper.com
4 DLA PIPER LLP (US)
2000 Avenue of the Stars
5 Suite 400 North Tower
Los Angeles, California 90067-4704
6 Tel: (310) 595-3000
Fax: (310) 595-3300
7

8 MESSNER REEVES LLP
Charles C. Cavanagh, Cal. Bar No. 198468
1430 Wynkoop Street, Suite 300
9 Denver, Colorado 80202
Telephone: 303.623.1800
10 Facsimile: 303.623.0552

11 Attorneys for Defendant
CHIPOTLE SERVICES, LLC
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 The Motion for Preliminary Approval of Class Action Settlement came on for hearing before this
2 Court, the Honorable Anne-Christine Massullo presiding, on September 23, 2020, at 1:30 p.m. The
3 Court, having considered the papers submitted in support of the motion and having heard oral argument
4 of the parties, **HEREBY ORDERS THE FOLLOWING:**

5
6 1. The Court grants preliminary approval of the settlement based upon the terms set forth in
7 the “Amended Stipulation of Class Action Settlement and Settlement Agreement” (the “Settlement
8 Agreement”) as set forth herein. The Settlement Agreement is attached as **Exhibit 1** to the Declaration
9 of Alan Harris. Capitalized terms in this Order shall have the definitions set forth in the Settlement
10 Agreement between Plaintiffs Tanika Turley and Susan Carrithers (collectively, “Plaintiffs”) and
11 Chipotle Services, LLC (“Chipotle”).

12 2. The Court hereby preliminarily certifies the Settlement Classes (the “Classes”), pursuant
13 to the terms and conditions of the Settlement Agreement and solely for the purposes set forth therein, as
14 a claims-made class under California Code of Civil Procedure 382, that is defined as follows:

15 The “Class Member” shall consist of any current or former employee of
16 Chipotle who was hired before August 1, 2014 and who worked in
17 California at any time between October 1, 2014 and August 1, 2020
18 (“Class Period”). Each person in the class is a “Class Member,” and all
19 such persons are referred to as the “Class.”

20 Excluded from the Class are any California employees that are members
21 of the collective action in the currently pending *Turner v. Chipotle*
22 *Mexican Grill, Inc., Case No. 1:14-cv-02612-JLK-CBS* or who have filed
23 individual arbitrations related to that action, as well as any other person
24 who has a pending arbitration or lawsuit as of August 1, 2020.

25 3. The Court hereby preliminarily determines that the settlement set forth in the Settlement
26 Agreement falls within the range of reasonableness and appears to be presumptively valid, subject only
27 to any objections that may be raised at the final settlement hearing. It appears to the Court that
28 substantial investigation and research have been conducted such that counsel for the Parties at this time
are reasonably able to evaluate their respective positions. It further appears to the Court that settlement
will avoid substantial additional costs by all Parties, as well as the delay and risk that would be
presented by further prosecution of the Litigation. It further appears to the Court that the settlement that
has been reached is the result of intensive, serious, non-collusive, arm’s-length negotiations.

1 4. Pursuant to California Rule of Court 3.769(e), the Court approves, as to form and content,
2 the Class Notice, Workweek Correction Form, Cash Option Form and Request for Exclusion Form
3 (collectively, the “Class Notice Materials”). The Court finds that these documents fairly and adequately
4 apprise Class Members of their rights under the Settlement Agreement.

5 5. The Class Notice Materials shall include an Exclusion Form that the Class Members may
6 use. The Exclusion Form shall (a) instruct the class member seeking exclusion that the Exclusion Form
7 must be mailed to the settlement administrator, (b) state the name and address of the settlement
8 administrator, and (c) state the date by which the Exclusion Form must be mailed. The Settlement
9 Administrator shall forward the copies of any Exclusion Form received to counsel for Plaintiff and
10 Defendant. The Settlement Administrator shall file a declaration concurrently with the filing of any
11 motion for final approval, authenticating a copy of every such Exclusion Form received by the
12 Settlement Administrator, if any.

13 6. The Class Notice Materials shall inform the Class Members that they may object to the
14 Settlement by filing an “Objection” with the Claims Administrator containing the case name and
15 number). The Class Notice Materials shall (a) instruct the objecting class member that any objection
16 must be mailed to the Settlement Administrator, (b) state the name and address of the Settlement
17 Administrator, and (c) state the date by which the objection must be mailed. Any objection should be
18 submitted to the Settlement Administrator and not to the Court. Class Members are not required to send
19 copies of the Objection Form to counsel or the Court. However, the Settlement Administrator shall
20 forward copies of any Objection Form received to counsel for Plaintiffs and Defendant. The Settlement
21 Administrator shall file a declaration concurrently with the filing of any motion for final approval,
22 authenticating a copy of every such Objection received, if any.

23 7. An objecting party shall not be required to appear, either personally or through counsel,
24 at the hearing on the motion for final approval for that party’s objection to be considered.

25 8. Either Class Counsel or the Settlement Administrator shall give notice to any objecting
26 party of any continuance of the hearing of the motion for final approval.

27 9. The Class Notice shall provide an estimate of the likely recovery by the Class Member.
28 To avoid discouraging any dissenting Class Members from objecting to the proposed settlement, the

1 Class Notice shall clearly indicate that the Court has determined only that there is sufficient evidence to
2 suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final
3 determination of those issues will be made at the final hearing.

4 10. The Settlement Administrator shall be Phoenix Class Action Administrators (the
5 “Settlement Administrator”). The Court orders Chipotle Services, LLC to provide the Settlement
6 Administrator a list of Class Members and all information needed to calculate the proportional share of
7 the Net Settlement Fund to each Settlement Class Member within fifteen (15) calendar days after entry
8 of this order. Furthermore, the Settlement Administrator is hereby ordered to mail the Notice Materials,
9 in English, to all Class Members via First Class U.S. mail no later than fifteen calendar (15) days after
10 receipt of the class data from Defendant. Thereafter, Class Members shall have sixty (60) days to
11 request exclusion or object to the Settlement Agreement by the methods set out in the Settlement
12 Agreement. Within thirty (30) calendar days after the Claims Administrator mails out the Notice
13 Materials, the Claim Administrator will mail out mutually acceptable reminder postcards to Class
14 Members reminding them of their right to submit a Claim Form, exclude themselves from the
15 settlement, object to the settlement, or dispute the Defendant’s employment records used to determine
16 the Class Members’ benefit under the Settlement. The Court finds that this procedure meets the
17 requirements of due process and provides the best notice practicable under the circumstances, and shall
18 constitute due and sufficient notice to all persons entitled thereto.

19 11. For settlement purposes only, the Court finds that Alan Harris, Priya Mohan and David
20 Garrett of Harris & Ruble and David Harris of North Bay Law Group have adequately represented the
21 Class and are provisionally appointed as Class Counsel solely for the purposes set forth in the Settlement
22 Agreement.

23 12. For settlement purposes only, the Court finds that Plaintiff Tanika Turley is an adequate
24 representative of the Settlement Class and appoints her as such.

25 13. A final settlement hearing on the question of whether the proposed settlement should be
26 finally approved as fair, reasonable, and adequate as to the members of the Settlement Class is scheduled
27 for _____, 2020, at 9:15 a.m. in Department 304 of the San Francisco County
28 Superior Court (the “Final Fairness Hearing”). The purpose of such hearing will be to: (a) determine

1 whether the Settlement Agreement should be approved by the Court as fair, reasonable, and adequate;
2 (b) determine the reasonableness of Class Counsel's request for attorney's fees and costs; (c) determine
3 the reasonableness of the Enhancement Payment; and (d) order entry of Judgment in the Actions. Class
4 Counsel shall forthwith reserve a date for the Final Fairness Hearing through the Court's online
5 reservation system.

6 14. Plaintiff shall file brief(s) requesting final approval of the settlement, an award of
7 reasonable attorneys' fees and costs, and an award of a reasonable Enhancement Payment not later than
8 _____, 2020. All other dates shall be as established by the Settlement Agreement.

9 15. At the final approval hearing, Class Counsel, in connection with their request for
10 attorneys' fees, shall provide a declaration as to the lodestar amount with supporting invoices.

11 16. With respect to the proposed Enhancement Payment, Class Representative Plaintiff's
12 declaration should address the factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238
13 *Cal.App.4th* 1251, 1252 and *Clark v. Am. Residential Servs. LLC* (2009) 175 *Cal.App.4th* 785, 804,
14 including the risks faced, actions taken and amount of time and effort spent on the litigation.

15 **IT IS SO ORDERED**

16
17 Dated: _____

18
19 By: _____
20 The Honorable Anne-Christine Massullo
21 Superior Court Judge
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I am an attorney for Plaintiff(s) herein, over the age of eighteen years, and not a party to the within
3 action. My business address is 655 N. Central Ave., 17th Floor, Glendale, CA 91203. On August 15,
4 2020, I served the within document(s):

5 **[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**

6 I caused such to be delivered by e-mail to:

7 angela.agrusa@us.dlapiper.com
8 levi.heath@us.dlapiper.com
9 Steve.hernandez@dlapiper.com

10 I am readily familiar with the Firm’s practice of collection and processing correspondence for mailing.
11 Under that practice, the document(s) would be deposited with the U.S. Postal Service on that same day
12 with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

13 Angela C. Agrusa
14 Levi W. Heath
15 Steve L. Hernández
16 DLA PIPER LLP (US)
17 2000 Avenue of the Stars
18 Suite 400 North Tower
19 Los Angeles, California 90067-4704

20 MESSNER REEVES LLP
21 Charles C. Cavanagh
22 1430 Wynkoop Street, Suite 300
23 Denver, Colorado 80202

24 I declare under penalty of perjury that the above is true and correct. Executed on August 15, 2020, at
25 Los Angeles, California.

26 

27 _____
28 David Garrett

Exhibit C

1 Alan Harris (SBN 146079)
David Garrett (SBN 160274)
HARRIS & RUBLE
2 655 North Central Avenue, 17th Floor
Glendale, CA 91203
3 Telephone: (323) 962-3777
Facsimile: (323) 962-3004
4 aharris@harrisandruble.com

5 David Harris (SBN 215224)
NORTH BAY LAW GROUP
6 116 E. Blithedale Ave., Ste. 2
Mill Valley, CA 94941
7 Telephone: (415) 388-8788
Facsimile: (415) 388-8770
8 dsh@northbaylawgroup.com

9 Attorneys for Plaintiff
10 TANIKA TURLEY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13
14 TANIKA TURLEY, individually and on
behalf of all others similarly situated,

15 Plaintiff,

16 v.

17
18 CHIPOTLE SERVICES, LLC; a Colorado
business entity, and DOES 1 through and
including DOE 100,

19 Defendants.
20
21

Case No. CGC-15-544936

[Hon. Anne-Christine Massullo, Dept. 304]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT & FINAL
JUDGMENT**

Date: N/A

Time: N/A

Dept.: 304

Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Angela C. Agrusa (SBN 131337)
angela.agrusa@us.dlapiper.com
Levi W. Heath (SBN 220854)
levi.heath@us.dlapiper.com
Steve L. Hernández (SBN 229065)
Steve.hernandez@dlapiper.com
DLA PIPER LLP (US)
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704
Tel: (310) 595-3000
Fax: (310) 595-3300

MESSNER REEVES LLP
Charles C. Cavanagh, Cal. Bar No. 198468
1430 Wynkoop Street, Suite 300
Denver, Colorado 80202
Telephone: 303.623.1800
Facsimile: 303.623.0552

Attorneys for Defendant
CHIPOTLE SERVICES, LLC

1
2 **[PROPOSED] ORDER GRANTING FINAL APPROVAL & FINAL JUDGMENT**

3 The Motion for Final Approval of Class Action Settlement came on for hearing before this
4 Court, the Honorable Anne-Christine Massullo presiding, on Date TBD, at __:00 a.m. The Court,
5 having considered the papers submitted in support of the motion and having heard oral argument of the
6 parties, **HEREBY ORDERS THE FOLLOWING:**

7 1. This Court has jurisdiction over the subject matter of this Action and over all parties to
8 this Action, including all members of the Settlement Class. The Court grants final approval of the
9 settlement based upon the terms set forth in the “Class Action Settlement and Release Between
10 Plaintiffs, Individually and on Behalf of the Settlement Class, and Defendant (the “Joint Stipulation of
11 Settlement”). Capitalized terms in this Order shall have the definitions set forth in the Joint Stipulation
12 of Settlement, attached as Exhibit 1 to the Declaration of Alan Harris filed on Date TBD, 2020.

13 2. The Court hereby finally certifies the Settlement Class (the “Class”), pursuant to the
14 terms and conditions of the Settlement Agreement and solely for the purposes set forth therein, as a
15 claims-made class under California Code of Civil Procedure 382, that is defined as follows:

16 The “Class Member” shall consist of any current or former employee of
17 Chipotle who was hired before August 1, 2014 and who worked in
18 California at any time between October 1, 2014 and August 1, 2020
19 (“Class Period”). Each person in the class is a “Class Member,” and all
20 such persons are referred to as the “Class.”

21 Excluded from the Class are any California employees that are members
22 of the collective action in the currently pending *Turner v. Chipotle*
23 *Mexican Grill, Inc., Case No. 1:14-cv-02612-JLK-CBS* or who have filed
24 individual arbitrations related to that action, as well as any other person
25 who has a pending arbitration or lawsuit as of August 1, 2020.

26 3. The Court hereby determines that the settlement set forth in the Joint Stipulation of
27 Settlement falls within the range of reasonableness and appears to be valid. There were _____
28 objections raised at the final settlement hearing. It appears to the Court that substantial investigation and
research have been conducted such that counsel for the Parties are reasonably able to evaluate their
respective positions. It further appears to the Court that settlement will avoid substantial additional costs
by all parties, as well as the delay and risk that would be presented by further prosecution of the Actions.
It further appears to the Court that the proposed settlement that has been reached is the result of

1 intensive, serious, non-collusive, arm's-length negotiations.

2 4. The Court approves, as to form and content, the form of Class Notice attached to the
3 Order Granting Preliminary Approval of Class Action Settlement. The Court finds that these documents
4 fairly and adequately apprise Settlement Class Members of their rights under the Settlement. The Court
5 determines that the Parties complied with the distribution of the Class Notice to the Settlement Class in
6 the manner and form set forth in the Preliminary Approval Order, and that the Class Notice provided to
7 the Settlement Class was the best notice practicable under the circumstances and constituted due and
8 sufficient notice to all persons entitled to such notice. The procedures required by the Preliminary
9 Approval Order have been carried out and satisfy due process requirements such that all absent
10 Settlement Class Members have been given the opportunity to participate fully in the claims exclusion
11 and the approval process.

12 5. The Court finds that the Settlement Administrator mailed the Class Notice, in English, to
13 all Settlement Class Members via First Class U.S. mail in accordance with the Order Granting
14 Preliminary Approval. The Settlement Class Members had sixty (60) days to request exclusion or object
15 to the Amended Joint Stipulation of Settlement by the method set out in the Amended Joint Stipulation
16 of Settlement. The Court finds that this procedure meets the requirements of due process and provided
17 the best notice practicable under the circumstances, and constituted due and sufficient notice to all
18 persons entitled thereto..

19 6. Pursuant to Code of Civil Procedure section 382 and Rule 3.769 of the California Rules
20 of Court, the Court grants final approval of the Settlement as set forth in the Joint Stipulation of
21 Settlement. For settlement purposes only, the Court finds that Alan Harris, Priya Mohan and David
22 Garrett of Harris & Ruble and David Harris of North Bay Law Group have adequately represented the
23 Class and are appointed as Class Counsel solely for the purposes set forth in the Joint Stipulation of
24 Settlement.

25 7. The Court finds that Plaintiff Tanika Turley is an adequate representative of the
26 Settlement Class and appoints them as such.

27 13. The court has reviewed all documentation submitted in support of the request for
28 Enhancement Award for Plaintiffs for their efforts in bringing and prosecuting this case, the financial

1 risk undertaken in bringing the action, recognizing the scope of the release, and to acknowledge
2 Plaintiffs' willingness to act as a private attorney general. Applying these standards, the Court approves
3 a class representative enhancement award in the amount of \$_____ each to Plaintiff Tanika
4 Turley, which the Court determines to be fair and reasonable.

5 9. The Court awards \$_____ in attorneys' fees and \$_____ in
6 actual costs to Class Counsel, which the Court determines to be fair and reasonable. The Court finds that
7 the forgoing award reflects reasonable payment for the efforts of counsel in prosecuting this class action,
8 and that the costs and expenses reimbursed represent those costs and expenses actually and reasonably
9 incurred in prosecuting the case. Upon entry of this Order, the Court hereby authorizes the Claims
10 Administrator to make payment to Harris & Ruble as set forth in the Joint Stipulation of Settlement.

11 10. The Court hereby approves a payment of \$50,000 to California's Labor and Workforce
12 Development Agency ("LWDA") to pay all applicable penalties under California Labor Code's Private
13 Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2699, 2699.3, and 2699.5.

14 11. The Court hereby approves a payment of \$49,500 to [TBD] Class Action Administration
15 for services as claims administrator.

16 12. The Court directs the Parties to effectuate the Settlement according to the terms of the
17 Joint Stipulation of Settlement, including payment to Authorized Claimants in accordance with the terms
18 of the Joint Stipulation of Settlement. Any uncashed checks or other cash residue from the Settlement
19 (the "Residue") shall be distributed pursuant to Code of Civil Procedure section 384 Public Counsel.

20 14. The parties shall bear all their own costs and attorneys' fees, except as otherwise set forth
21 in the Joint Stipulation of Settlement or this Judgment.

22 15. Pursuant to California Rule of Court, Rule 3.769(h), and without affecting the finality of
23 this Judgment, the Court shall retain jurisdiction over the parties to enforce the terms of the Judgment.
24 Pursuant to Code of Civil Procedure section 664.6 and Rule 3.769(h) of the California Rules of Court
25 and without affecting the finality of this Judgment, the Court reserves exclusive and continuing
26 jurisdiction over this Action, Plaintiff, the Class Members, and Defendant for the purposes of
27 supervising:
28

- 1 (a) the implementation, enforcement, construction, and interpretation of the Joint Stipulation,
2 the Order Granting Preliminary Approval of Class Action Settlement, the plan of allocation, the
3 Order Granting Final Approval of Class Action Settlement, and the Judgment; and
4 (b) distribution of amounts paid under the Settlement.
5 (c) final declaration regarding total amount actually paid to the class members.

6 16. The Court orders Class Counsel to file a final report by Date TBD, 2020, summarizing all
7 distributions made to the class members, supported by a declaration. Code Civ. Proc., § 384, subd. (b).
8 The status conference concerning the final report shall be set for Date TBD, 2020, or a date that the
9 Court deems proper. The final report shall be in the form of a declaration from the settlement
10 administrator or other declarant with personal knowledge of the facts, and shall describe (i) the date the
11 checks were mailed, (ii) the total number of checks mailed to class members, (iii) the average amount of
12 those checks, (iv) the number of checks that remain uncashed, (v) the total value of those uncashed
13 checks, (vi) the average amount of the uncashed checks, and (vii) the nature and date of the disposition
14 of those unclaimed funds.

15 17. Notice of this Judgment and of Entry of this Judgment which states that “[o]n [date of
16 entry of Judgment], 2020, the Court entered Judgment in this Class Action Settlement. The Court’s
17 Judgment Re Class Action Settlement is attached.” shall be effectuated by: (a) serving it on the
18 Settlement Class through service upon Class Counsel and Defendant’s counsel by Class Counsel, and
19 (b) posting it on the Claims Administrator’s website. Cal. Rules of Court, rule 3.771(b)).

20 15. The following Class Members opted out of the settlement:

21 _____
22 _____

23 **IT IS SO ORDERED**

24
25 Dated: _____

26
27 By: _____
28 The Honorable Anne-Christine Massullo
Superior Court Judge

Exhibit D

1 Alan Harris (SBN 146079)
David Garrett (SBN 160274)
HARRIS & RUBLE
2 655 North Central Avenue, 17th Floor
Glendale, CA 91203
3 Telephone: (323) 962-3777
Facsimile: (323) 962-3004
4 aharris@harrisandruble.com

5 David Harris (SBN 215224)
NORTH BAY LAW GROUP
6 116 E. Blithedale Ave., Ste. 2
Mill Valley, CA 94941
7 Telephone: (415) 388-8788
Facsimile: (415) 388-8770
8 dsh@northbaylawgroup.com

9 Attorneys for Plaintiff
10 TANIKA TURLEY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13
14 TANIKA TURLEY, individually and on
behalf of all others similarly situated,

15 Plaintiff,

16 v.

17
18 CHIPOTLE SERVICES, LLC; a Colorado
business entity, and DOES 1 through and
including DOE 100,

19 Defendants.
20
21

Case No. CGC-15-544936

[Hon. Anne-Christine Massullo, Dept. 304]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT & FINAL
JUDGMENT**

Date: N/A

Time: N/A

Dept.: 304

Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Angela C. Agrusa (SBN 131337)
angela.agrusa@us.dlapiper.com
Levi W. Heath (SBN 220854)
levi.heath@us.dlapiper.com
Steve L. Hernández (SBN 229065)
Steve.hernandez@dlapiper.com
DLA PIPER LLP (US)
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704
Tel: (310) 595-3000
Fax: (310) 595-3300

MESSNER REEVES LLP
Charles C. Cavanagh, Cal. Bar No. 198468
1430 Wynkoop Street, Suite 300
Denver, Colorado 80202
Telephone: 303.623.1800
Facsimile: 303.623.0552

Attorneys for Defendant
CHIPOTLE SERVICES, LLC

1
2 **[PROPOSED] ORDER GRANTING FINAL APPROVAL & FINAL JUDGMENT**

3 The Motion for Final Approval of Class Action Settlement came on for hearing before this
4 Court, the Honorable Anne-Christine Massullo presiding, on Date TBD, at __:00 a.m. The Court,
5 having considered the papers submitted in support of the motion and having heard oral argument of the
6 parties, **HEREBY ORDERS THE FOLLOWING:**

7 1. This Court has jurisdiction over the subject matter of this Action and over all parties to
8 this Action, including all members of the Settlement Class. The Court grants final approval of the
9 settlement based upon the terms set forth in the “Class Action Settlement and Release Between
10 Plaintiffs, Individually and on Behalf of the Settlement Class, and Defendant (the “Joint Stipulation of
11 Settlement”). Capitalized terms in this Order shall have the definitions set forth in the Joint Stipulation
12 of Settlement, attached as Exhibit 1 to the Declaration of Alan Harris filed on Date TBD, 2020.

13 2. The Court hereby finally certifies the Settlement Class (the “Class”), pursuant to the
14 terms and conditions of the Settlement Agreement and solely for the purposes set forth therein, as a
15 claims-made class under California Code of Civil Procedure 382, that is defined as follows:

16 The “Class Member” shall consist of any current or former employee of
17 Chipotle who was hired before August 1, 2014 and who worked in
18 California at any time between October 1, 2014 and August 1, 2020
19 (“Class Period”). Each person in the class is a “Class Member,” and all
20 such persons are referred to as the “Class.”

21 Excluded from the Class are any California employees that are members
22 of the collective action in the currently pending *Turner v. Chipotle*
23 *Mexican Grill, Inc., Case No. 1:14-cv-02612-JLK-CBS* or who have filed
24 individual arbitrations related to that action, as well as any other person
25 who has a pending arbitration or lawsuit as of August 1, 2020.

26 3. The Court hereby determines that the settlement set forth in the Joint Stipulation of
27 Settlement falls within the range of reasonableness and appears to be valid. There were _____
28 objections raised at the final settlement hearing. It appears to the Court that substantial investigation and
research have been conducted such that counsel for the Parties are reasonably able to evaluate their
respective positions. It further appears to the Court that settlement will avoid substantial additional costs
by all parties, as well as the delay and risk that would be presented by further prosecution of the Actions.
It further appears to the Court that the proposed settlement that has been reached is the result of

1 intensive, serious, non-collusive, arm's-length negotiations.

2 4. The Court approves, as to form and content, the form of Class Notice attached to the
3 Order Granting Preliminary Approval of Class Action Settlement. The Court finds that these documents
4 fairly and adequately apprise Settlement Class Members of their rights under the Settlement. The Court
5 determines that the Parties complied with the distribution of the Class Notice to the Settlement Class in
6 the manner and form set forth in the Preliminary Approval Order, and that the Class Notice provided to
7 the Settlement Class was the best notice practicable under the circumstances and constituted due and
8 sufficient notice to all persons entitled to such notice. The procedures required by the Preliminary
9 Approval Order have been carried out and satisfy due process requirements such that all absent
10 Settlement Class Members have been given the opportunity to participate fully in the claims exclusion
11 and the approval process.

12 5. The Court finds that the Settlement Administrator mailed the Class Notice, in English, to
13 all Settlement Class Members via First Class U.S. mail in accordance with the Order Granting
14 Preliminary Approval. The Settlement Class Members had sixty (60) days to request exclusion or object
15 to the Amended Joint Stipulation of Settlement by the method set out in the Amended Joint Stipulation
16 of Settlement. The Court finds that this procedure meets the requirements of due process and provided
17 the best notice practicable under the circumstances, and constituted due and sufficient notice to all
18 persons entitled thereto..

19 6. Pursuant to Code of Civil Procedure section 382 and Rule 3.769 of the California Rules
20 of Court, the Court grants final approval of the Settlement as set forth in the Joint Stipulation of
21 Settlement. For settlement purposes only, the Court finds that Alan Harris, Priya Mohan and David
22 Garrett of Harris & Ruble and David Harris of North Bay Law Group have adequately represented the
23 Class and are appointed as Class Counsel solely for the purposes set forth in the Joint Stipulation of
24 Settlement.

25 7. The Court finds that Plaintiff Tanika Turley is an adequate representative of the
26 Settlement Class and appoints them as such.

27 13. The court has reviewed all documentation submitted in support of the request for
28 Enhancement Award for Plaintiffs for their efforts in bringing and prosecuting this case, the financial

1 risk undertaken in bringing the action, recognizing the scope of the release, and to acknowledge
2 Plaintiffs' willingness to act as a private attorney general. Applying these standards, the Court approves
3 a class representative enhancement award in the amount of \$_____ each to Plaintiff Tanika
4 Turley, which the Court determines to be fair and reasonable.

5 9. The Court awards \$_____ in attorneys' fees and \$_____ in
6 actual costs to Class Counsel, which the Court determines to be fair and reasonable. The Court finds that
7 the forgoing award reflects reasonable payment for the efforts of counsel in prosecuting this class action,
8 and that the costs and expenses reimbursed represent those costs and expenses actually and reasonably
9 incurred in prosecuting the case. Upon entry of this Order, the Court hereby authorizes the Claims
10 Administrator to make payment to Harris & Ruble as set forth in the Joint Stipulation of Settlement.

11 10. The Court hereby approves a payment of \$50,000 to California's Labor and Workforce
12 Development Agency ("LWDA") to pay all applicable penalties under California Labor Code's Private
13 Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2699, 2699.3, and 2699.5.

14 11. The Court hereby approves a payment of \$49,500 to [TBD] Class Action Administration
15 for services as claims administrator.

16 12. The Court directs the Parties to effectuate the Settlement according to the terms of the
17 Joint Stipulation of Settlement, including payment to Authorized Claimants in accordance with the terms
18 of the Joint Stipulation of Settlement. Any uncashed checks or other cash residue from the Settlement
19 (the "Residue") shall be distributed pursuant to Code of Civil Procedure section 384 Public Counsel.

20 14. The parties shall bear all their own costs and attorneys' fees, except as otherwise set forth
21 in the Joint Stipulation of Settlement or this Judgment.

22 15. Pursuant to California Rule of Court, Rule 3.769(h), and without affecting the finality of
23 this Judgment, the Court shall retain jurisdiction over the parties to enforce the terms of the Judgment.
24 Pursuant to Code of Civil Procedure section 664.6 and Rule 3.769(h) of the California Rules of Court
25 and without affecting the finality of this Judgment, the Court reserves exclusive and continuing
26 jurisdiction over this Action, Plaintiff, the Class Members, and Defendant for the purposes of
27 supervising:
28

- 1 (a) the implementation, enforcement, construction, and interpretation of the Joint Stipulation,
2 the Order Granting Preliminary Approval of Class Action Settlement, the plan of allocation, the
3 Order Granting Final Approval of Class Action Settlement, and the Judgment; and
4 (b) distribution of amounts paid under the Settlement.
5 (c) final declaration regarding total amount actually paid to the class members.

6 16. The Court orders Class Counsel to file a final report by Date TBD, 2020, summarizing all
7 distributions made to the class members, supported by a declaration. Code Civ. Proc., § 384, subd. (b).
8 The status conference concerning the final report shall be set for Date TBD, 2020, or a date that the
9 Court deems proper. The final report shall be in the form of a declaration from the settlement
10 administrator or other declarant with personal knowledge of the facts, and shall describe (i) the date the
11 checks were mailed, (ii) the total number of checks mailed to class members, (iii) the average amount of
12 those checks, (iv) the number of checks that remain uncashed, (v) the total value of those uncashed
13 checks, (vi) the average amount of the uncashed checks, and (vii) the nature and date of the disposition
14 of those unclaimed funds.

15 17. Notice of this Judgment and of Entry of this Judgment which states that “[o]n [date of
16 entry of Judgment], 2020, the Court entered Judgment in this Class Action Settlement. The Court’s
17 Judgment Re Class Action Settlement is attached.” shall be effectuated by: (a) serving it on the
18 Settlement Class through service upon Class Counsel and Defendant’s counsel by Class Counsel, and
19 (b) posting it on the Claims Administrator’s website. Cal. Rules of Court, rule 3.771(b)).

20 15. The following Class Members opted out of the settlement:

21 _____
22 _____

23 **IT IS SO ORDERED**

24
25 Dated: _____

26
27 By: _____
28 The Honorable Anne-Christine Massullo
Superior Court Judge

Exhibit 2

IMPORTANT LEGAL NOTICE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

TANIKA TURLEY and CHRISTOPHER THOMPSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

CHIPOTLE SERVICES, LLC,

Defendants.

CASE NO. CGC-15-544936

**NOTICE OF PRIVATE ATTORNEY
GENERAL ACT (“PAGA”) AND
CLASS ACTION SETTLEMENT
AND SETTLEMENT HEARING**

TO: ALL CURRENT AND FORMER NON-EXEMPT EMPLOYEES OF DEFENDANT THAT WERE HIRED BEFORE AUGUST 1, 2014, AND WORKED IN CALIFORNIA AT ANY TIME FROM OCTOBER 1, 2014 THROUGH AUGUST 1, 2020.

**A PROPOSED SETTLEMENT AFFECTS YOUR RIGHTS.
PLEASE READ THIS NOTICE CAREFULLY.**

A proposed settlement of the above-captioned class action (“the Litigation”) filed in the San Francisco County Superior Court (“the Court”) has been reached by the parties and has been granted preliminary approval by the Court supervising the Litigation.

The Maximum Gross Settlement Amount is \$1,750,000. Plaintiffs will ask that the \$1,750,000 cash payment be used to cover up to \$583,333 in attorney’s fees, up to \$25,000 in litigation costs, an estimated \$50,000 in settlement administration costs, up to \$2,500 in a total enhancement payment to the class representative, and \$50,000 to the Labor and Workforce Development Agency as penalties under the California Labor Code. The remainder of the cash payment, estimated to be \$1,039,167, would then be distributed to the Class, estimated to include approximately 7,000 members, based on the number of workweeks worked in the Class Period.

The proposed settlement will resolve all claims for “Settlement Class Members,” defined as follows:

The “Class Member” shall consist of any current or former employee of Chipotle who was hired before August 1, 2014 and who worked in California at any time between October 1, 2014 and August 1, 2020 (“Class Period”). Each person in the class is a “Class Member,” and all such persons are referred to as the “Class.”

Excluded from the Class are any California employees that are members of the collective action in the currently pending *Turner v. Chipotle Mexican Grill, Inc.*, Case No. 1:14-cv-02612-JLK-CBS or who have filed individual arbitrations related to that action, as well as any other person who has a pending arbitration or lawsuit as of August 1, 2020.

The Court has ordered that this Notice of Class Action Settlement and Settlement Hearing (the “Class Notice”) be sent to you because you may be a Settlement Class Member. The purpose of

this Class Notice is to inform you of the settlement of this Litigation and your legal rights under the Amended Class Action Settlement Agreement and Release of Claims (the “Settlement Agreement”).

PARTICIPATION

3. To receive a payment from the settlement, you need not take any action, except that you should update the Claims Administrator with your new address if you move. If you do nothing, and the settlement receives final approval, you will be mailed a check from the settlement at your address of record. If the Court grants final approval of the Settlement, the Court will enter judgment, the Settlement will bind all Class Members who have not opted out, and the judgment will bar all Class Members from bringing any claims released in the Settlement. The release is described below.

EXCLUSIONS

4. The only way for you to be part of any other lawsuit or arbitration against Chipotle involving the legal claims that are being released in this settlement (see paragraph 19) is to submit the enclosed Request for Exclusion from Class Action (an “Exclusion Form”) to the Court-appointed settlement administrator (the “Settlement Administrator”) postmarked no later than **[Exclusion Deadline], 2020 [60 days from mailing]**. This is called an “Opt Out”. Alternatively, you can submit your own written request for exclusion. Detailed instructions for requesting exclusion are set forth in paragraph 27 below.

OBJECTIONS

5. If you wish to object to the settlement, you must submit an Objection to the Settlement Administrator (an “Objection”), and supporting papers, to the Settlement Administrator (who will send copies to the Court and counsel) postmarked no later than **[Objection Deadline], 2020 [60 days from mailing]**. Alternatively you can appear at the final approval hearing for the settlement. Detailed instructions for submitting an objection are set forth below.

PRELIMINARY APPROVAL

6. A hearing on the final determination of the adequacy, reasonableness and fairness of the settlement will be held **at ____ a.m./p.m. on _____, 2020** in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102. **You are not required to attend this hearing.**

SUMMARY OF LITIGATION

7. On March 25, 2015, Plaintiff Tanika Turley (“Turley”) filed a complaint against Chipotle with class claims under the California Labor Code and Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2699, 2699.3, and 2699.5. Turley alleged that Chipotle had failed timely to pay wages – including all earned wages, final wages, and wages owing on account of interrupted meal periods and rest breaks – to its employees. Turley has also alleged unfair business practices, failure to reimburse expenses, failure to keep accurate records

and that Chipotle provided improper wage statements to them and other current and former Chipotle employees (the “Allegations,” collectively).

On or about May 23, 2018, Turley filed a Motion for Class Certification for wage statements, meal breaks, rest breaks and continuing wages. On November 2, 2018, the Court granted certification of a “wage statement subclass, narrowed to individuals who did not sign arbitration agreements”. The Court ordered the parties to “confer on the precise wording of the class definition and should consider whether it includes (i) individuals hired before August 1, 2014 or October 2, 2014, and (ii) whether it ends March 30, 2015, or some other date, e.g. in April, 2015.” The Court denied the Motion for Class Certification for the meal breaks, rest breaks and continuing wages. Subsequently, the Parties agreed that the class definition should include individuals hired before August 1, 2014 and end on March 30, 2015.

8. After an exchange of relevant information, Chipotle and Turley agreed to enter into private mediation before a mediator to try and resolve the claims. A mediation was held on October 1, 2019, and the parties reached the settlement that was denied preliminary approval by the Court. Based upon the guidance of the Court, in consultation with the mediator, and following a Mandatory Settlement Conference, the parties entered into a revised settlement, which is memorialized in the Settlement Agreement that is on file with the Court, and whose terms are generally summarized in this Class Notice.

9. You have received this Class Notice because Chipotle records show you were employed as a Settlement Class Member and your rights may be affected by this settlement.

POSITIONS OF THE PARTIES

10. Chipotle has denied and continues to deny each of the Allegations in the Litigation. Chipotle contends that all of its employees have been provided meal and rest breaks and compensated in compliance with the law, and that its conduct was not willful with respect to any alleged failure to pay any penalties. Chipotle alleges that all employees hired after August 1, 2014, executed valid arbitration agreements. Chipotle has repeatedly asserted and continues to assert defenses to the Allegations in the Litigation, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Litigation. Neither the settlement nor any action taken to carry out the settlement may be construed as or may be used as an admission, concession or indication by or against Chipotle of any fault, wrongdoing or liability whatsoever, including any concession that certification of a class other than for purposes of this settlement would be appropriate in this or any other case.

11. Counsel for the Settlement Class (“Class Counsel”) has extensively investigated and researched the facts and circumstances underlying the issues raised in the Litigation, and the law applicable thereto. Class Counsel recognizes the expense and length of continued proceedings necessary to continue the Litigation against Chipotle through trial and through any possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, including the risk that the class might not be certified, as well as the difficulties and delays generally inherent in such litigation.

12. Class Counsel is also aware of the burdens of proof necessary to establish liability for the Allegations, of Chipotle’s defenses thereto, and of the difficulties in establishing damages for the

Settlement Class Members. Class Counsel has also taken into account the extensive settlement negotiations conducted by the parties. Based on the foregoing, Class Counsel believes the settlement is fair, adequate and reasonable and in the best interests of the Settlement Class Members.

13. Chipotle has also extensively investigated and researched the facts and circumstances underlying the issues raised in the Litigation, and the law applicable thereto. Although Chipotle believes it has meritorious defenses to the Allegations, Chipotle has concluded that the further defense of this Litigation would be lengthy and expensive for all parties. Chipotle has, therefore, agreed to settle this Litigation in the manner and upon the terms set forth in the Settlement Agreement to put to rest all claims that are or could have been asserted against it in the Litigation.

14. The Court has not ruled on the merits of the Settlement Class Members' claims. The Court has certified the Settlement Class for settlement purposes only.

PRELIMINARY APPROVAL OF THE SETTLEMENT

15. On [*date of preliminary approval*], for purposes of the settlement, the Court held a preliminary approval hearing during which it preliminarily certified a Settlement Class defined as follows:

The Class shall consist of any current or former employee of Chipotle who was hired before August 1, 2014 and who worked in California at any time between October 1, 2014 and August 1, 2020 ("Class Period"). Each person in the class is a "Class Member," and all such persons are referred to as the "Class."

Excluded from the Class are any California employees that are members of the collective action in the currently pending *Turner v. Chipotle Mexican Grill, Inc.*, Case No. 1:14-cv-02612-JLK-CBS or who have filed individual arbitrations related to that action, as well as any other person who has a pending arbitration or lawsuit as of August 1, 2020.

16. At the preliminary approval hearing, the Court appointed the following attorneys as Class Counsel to represent the Settlement Class in this Litigation:

Alan Harris
David Garrett
HARRIS & RUBLE
655 N. Central Ave., 17th Floor
Glendale, CA 91203
Telephone: (323) 962-3777
Email: HarrisA@harrisandruble.com
DGarrett@harrisandruble.com

David Harris
NORTH BAY LAW GROUP
116 E. Blithedale Ave., Ste. 2
Mill Valley, CA 94941
Telephone: (415) 388-8788
Email: dsh@northbaylawgroup.com

17. If you are a Settlement Class Member, you will be bound by the settlement if it is approved, unless you exclude yourself in the manner described below.

SUMMARY OF SETTLEMENT TERMS

18. Settlement Amount. The Settlement Agreement provides that Chipotle will pay the Maximum Gross Settlement Amount of \$1,750,000.00. Plaintiffs will ask that the \$1,750,000 cash payment be used to cover up to \$583,333 in attorney's fees, up to \$25,000 in litigation costs, an estimated \$50,000 in settlement administration costs, up to \$2,500 in total enhancement payments to the class representative, and \$50,000 to the Labor and Workforce Development Agency as penalties under the California Labor Code. The remainder of the cash payment, estimated to be \$1,039,167, would then be distributed to the Class, estimated to include approximately 7,000 members, based on the number of workweeks worked in the Class Period. Therefore, the average check to be mailed to each Settlement Class Member would be \$148 each.

After the following Court-approved deductions from the Maximum Gross Settlement Amount, the amount remaining will be distributed to Settlement Class Members pursuant to a Court-approved plan of allocation based on the number of weeks worked ("Workweeks") during the Class Period, as detailed below:

(a) Deductions. The following deductions will be made from the Maximum Gross Settlement Amount:

(i) Settlement Administration. The Court has tentatively approved a payment to the Settlement Administrator, [TBD], currently estimated not to exceed \$50,000, as settlement administration expenses to notify the Class and process corrections, objections, and exclusions.

(ii) Attorney's Fees and Expenses. The Court has appointed Harris & Ruble as Class Counsel. Class Counsel has been prosecuting the Litigation on behalf of the Settlement Class on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. Class Counsel has requested from the Court payment not to exceed 33.33% of the total settlement amount for attorney's fees (\$583,333). Class Counsel has also requested from the Court reimbursement of the actual expenses they have advanced, currently estimated in an amount no more than \$25,000. Payments will be subject to the Court's approval and will be deducted from the settlement amount. The amounts approved will constitute full compensation for all legal fees and expenses of Class Counsel in the Litigation, including any work they do in the future. These attorney's fees are within the range of fees awarded to Class Counsel under similar circumstances in litigation of this type. Settlement Class Members are not personally responsible for any fees or expenses.

(iii) Enhancement Payment to Class Representative Plaintiff. Class Counsel will also seek an "Enhancement Payment" for Plaintiff Turley for acting as the representative on behalf of the Settlement Class in the amount of \$2,500. If approved by the Court, this amount will be paid from the settlement amount to compensate the Plaintiff as class representative plaintiff for services she provided on behalf of the Settlement Class, including initiating and prosecuting this Litigation on behalf of the Settlement Class, as well as reviewing documents and attending strategy sessions and other meetings with Class Counsel.

(iv) PAGA Payment. A net payment of \$50,000 shall be allocated to pay all applicable penalties under California Labor Code's Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2699, 2699.3, and 2699.5.

(b) Payment to Final Settlement Class Members: Plan of Allocation. The balance of the Maximum Gross Settlement Amount, after the deductions described above, will be available for distribution to final Settlement Class Members.

Class Members do not have to submit claims forms or take any action to participate.

Class Members who do not affirmatively opt-out of the settlement will receive a check for a pro-rata share of the Net Settlement Amount based on pay periods worked during the Class Period. All checks shall be good for 180 days from the date of mailing. Following the expiration of 180 days, the Claims Administrator shall inform the parties of the total amount of uncashed checks. If the amount of uncashed checks exceeds \$27,500, then a second round of checks will be mailed to any Settlement Class Member who cashed their checks during the first round. The amount of each check in the Second Distribution shall be equal to a pro rata share of the amount of Uncashed Checks after deductions for postage and handling by the Claims Administrator. Following the Second Distribution, if any, the parties propose that all checks not cashed within 180 days of payment shall be paid to the California pro bono law firm, Public Counsel, as the *cy pres* recipient, subject to Court approval, in accordance with Code of Civil Procedure §384, subd. (b).

(c) Payments for Employee and Employer Taxes. The allocation of payment of claims and tax treatment of such claims shall be 25% wages, 25% interest, and 50% penalties. From the portion which is allocated as wages shall be withheld the employee's share of payroll and income taxes and all other applicable deductions or withholding required by law or expressly authorized by the Class Member, including payments of any garnishments and liens. IRS Forms 1099 and W2 (and any equivalent California form) will be distributed to the final Settlement Class Members (those who have not excluded themselves) reflecting the payments they receive under the settlement. Interest and penalties shall be reported as such (Form 1099 reporting) to the taxing authorities. Final Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the settlement. Final Settlement Class Members are solely responsible for, and waive any claim against Chipotle arising from, any and all tax liability accruing from the receipt of these settlement payments.

19. Release. If finally approved by the Court, the settlement will be binding on all Class Members who do not exclude themselves from the settlement and will bar them from bringing certain claims against Chipotle described below. Effective as of the Final Effective Date, the settlement shall resolve and the class shall release all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, fees and costs that were stated in the Complaints and any Amended Complaints and/or those based upon the factual allegations in the operative Complaints to the maximum extent allowed by law, during the Class Period as follows:

Once the settlement is finalized, all Class Members who have not submitted timely and valid Exclusion Letters will release and discharge Defendant, their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (the "Released Parties") from all claims, demands, rights, liabilities and causes of action that were or could have been asserted (whether in tort, contract or otherwise) for violation of the California Labor Code, the California Business and Professions Code, the applicable Industrial Welfare

Commission Orders or any similar state or federal law, whether for economic damages, non-economic damages, liquidated damages, punitive damages, restitution, penalties, other monies, or other relief based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act pled or arising out of or reasonably related to the facts, transactions, and occurrences pled in the Complaint, the First Amended Complaint, Second Amended Complaint or the Third Amended Complaint, which are or could be the basis of claims for: (1) unpaid wages; (2) unpaid minimum wages; (3) unpaid or underpaid overtime wages; (4) failure to provide meal periods and claims regarding meal period premium pay; (5) failure to provide rest periods and claims regarding rest period premium pay; (6) failure to reimburse expenses; (7) failure to provide accurate wage statements; (8) failure to timely pay wages upon termination and during employment; (9) claims for unfair competition arising from the facts alleged in the operative complaints; and (10) related claims for penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA) for California Labor Code sections 201, 202, and 203 (collectively, “Released Claims”). The release will exclude claims for vested benefits, wrongful termination (apart from that of Plaintiff Turley and any other named Plaintiff who will execute general releases of claims under Civil Code section 1542), unemployment insurance, disability, workers’ compensation, and claims outside of the Class Period. The Gross Individual Settlement Payment to Participating Class Members will not result in any additional benefit payments beyond those provided by this Agreement to Plaintiff and Participating Class Members. Participating Class Members will be deemed to have waived all such claims for benefits premised upon the Gross Individual Settlement Payments to them, whether known or unknown by them, as part of their Released Claims under this Agreement.

20. Condition of Settlement. This settlement is conditioned upon the Court entering a final approval order at or following the final approval hearing approving the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Settlement Class.

PROCEDURE FOR SEEKING MONETARY RECOVERY

21. **To receive a payment from the settlement, you need not take any action, except that you should update the Claims Administrator with your new address if you move. If you do nothing, you will receive either a check from the settlement if it receives final approval. Settlement Class Members will receive a cash payment based upon their Workweeks. If the Court grants final approval of the Settlement, the Court will enter judgment, the Settlement will bind all Class Members who have not opted out, and the judgment will bar all Class Members from bringing any claims released in the Settlement.**

22. A Workweek Correction Form is enclosed. (If you need an extra copy, contact the Settlement Administrator at the address or telephone number above). If any information in your Form is incorrect, please make corrections and mail the completed Form postmarked by **[60 days from mailing]** to the Settlement Administrator at the following address:

Turley v. Chipotle

c/o [_____]

P.O. Box [_____]

[Address]

[Phone Number]

[Fax Number]

23. For example, if your address is incorrect, please indicate your correct address. Also, please provide your telephone number and any other requested information if it is not already filled in. If you wish to have confirmation that the Settlement Administrator has received your Form, please send your Form to the Settlement Administrator by certified U.S. Mail with a return-receipt request. **You need not do anything or return the Form if all the information is correct.**

24. If you believe the number of Workweeks listed on the Correction Form is incorrect, you may indicate what you believe is the correct number of Workweeks on the Correction Form. You may also send any documents or other information that support your belief. The Settlement Administrator will resolve any dispute regarding the dates you worked for, based on Chipotle records and any information that you provide. The number of Workweeks is presumed to be correct unless the documents you submit are company records from Chipotle.

25. If you are a Class Member and you do not elect to exclude yourself from this settlement through the exclusion procedure described in paragraph 27 below, you will be bound by all of the provisions of the Settlement Agreement, including a full release of claims that will prevent you from separately suing Chipotle or any of the other parties released by the Settlement Agreement for the matters being settled in this case (see paragraph 19 of this Notice). The checks hereunder will be mailed approximately three months after final approval, if granted. The checks will be negotiable for 180 days after they are issued.

26. AGAIN, IF YOU DO NOTHING, YOU WILL RECEIVE A SHARE OF THE SETTLEMENT AMOUNT IF GRANTED FINAL APPROVAL, AND YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE.

PROCEDURE FOR EXCLUDING YOURSELF FROM THE SETTLEMENT

27. Class Members may exclude themselves from the Settlement Class by submitting an enclosed copy of the Exclusion Form to the Settlement Administrator at the address listed in paragraph 22, above, postmarked on or before [redacted], 2020 [last day of Exclusion Period]. To exclude yourself, you must complete the Exclusion Form in its entirety, or in the alternative, submit a letter to the Settlement Administrator which includes your name (and former names, if any), current address, telephone number and a signed statement in substantially the same form as follows: "Please exclude me from the proposed Settlement Class in *Turley v. Chipotle*, Case No. CGC-15-544936." Persons who submit valid and timely Exclusion Forms will not participate in the settlement and will not be bound by either the settlement or the Court's final approval order in this Litigation. Do not file the Exclusion Form with the Court.

PROCEDURE FOR OBJECTING TO THE SETTLEMENT

28. If you are a Settlement Class Member and believe that the Settlement Agreement should not be finally approved by the Court for any reason, or if you object to the proposed Enhancement Payments to the Class Representative Plaintiffs or the attorneys' fees and expenses to Class Counsel and want the Court to consider your objection, then on or before [redacted] 2020, [last day of Exclusion Period] you must mail, email or fax a written objection in which you state

the basis of your objection with to Settlement Administrator at the address listed in paragraph 22. Any written objection must include your name, signature and address, and a statement of the basis for each objection asserted. All objections or other correspondence must state the name of the case, *Turley v. Chipotle*, Case No. CGC-15-544936. Any Settlement Class Member who has elected not to participate by following the procedure set forth above in paragraph 27, may not submit an objection to the Settlement.

29. You may also appear at the hearing scheduled for _____ a.m./p.m. on _____, 2020 in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street, San Francisco, California, 94102, to have your objection heard by the Court. If you object to the settlement, you will remain a Settlement Class Member, and if the Court approves the settlement, you will be bound by the terms of the Settlement Agreement in the same way as Settlement Class Members who do not object. An objecting party shall *not* be required to do either of the following: (1) to appear, either personally or through counsel, at the hearing on the motion for final approval for that party's objection to be considered; or (2) to file or serve a notice of intention to appear at the hearing on the motion for final approval of the settlement.

HEARING ON THE SETTLEMENT

30. Notwithstanding the statements above, **you are not required to attend the final approval hearing.**

31. Again, the final approval hearing on the adequacy, reasonableness and fairness of the settlement will be held at _____ a.m./p.m. on _____, 2020 in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street San Francisco, California, 94102. Either Class Counsel or the Settlement Administrator will give notice to any objecting party of any continuance of the hearing of the motion for final approval.

32. You may object, personally or through an attorney, to the settlement by mailing your objection and following the procedures outlined in paragraphs 28-29, above.

33. Any Settlement Class Member who does not object in the manner provided above shall be deemed to have approved the settlement and to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the settlement.

CHANGE OF ADDRESS

34. If you move after receiving this Class Notice, if it was misaddressed or if for any reason you want your payment or future correspondence concerning this Litigation and the settlement to be sent to a different address, you should send your current preferred address to the Settlement Administrator.

ADDITIONAL INFORMATION

35. This Class Notice is only a summary of the Litigation and the Settlement Agreement. For a more detailed statement of the matters involved in the Litigation and the settlement, you may

refer to the pleadings, the Settlement Agreement, and other papers filed in the Litigation (including the Plaintiff's motion for preliminary approval of the Settlement Agreement and supporting papers), which may be inspected at the Office of the Clerk of the Superior Court of California, County of San Francisco, located at Civic Center Courthouse, 400 McAllister Street, San Francisco, California, 94102, during regular business hours of each court day. The case file may also be viewed online and downloaded for free at the court's website at <https://webapps.sftc.org/captcha/captcha.dll?referrer=https://webapps.sftc.org/ci/CaseInfo.dll?>. The Settlement Agreement is attached as Exhibit 1 to the Declaration of Alan Harris filed on _____, 2020. The Settlement Administrator will also post relevant documents on its website at _____, including the Settlement Agreement, the Court Order(s) and Final Judgment, if entered.

36. All inquiries by Settlement Class Members regarding this Class Notice and/or the Settlement Agreement, should be directed to the Settlement Administrator or Class Counsel.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR JUDGE WITH INQUIRIES.

<p>WORKWEEK & ADDRESS CORRECTION FORM Chipotle Services, LLC San Francisco County Superior Court – Case No. CGC-15-544936</p>
--

To be mailed a payment from this settlement, you need not take any action. You do not need to return this Workweek Correction Form. If you do nothing, a payment from the settlement amount will be sent to you at the address below if the settlement receives final approval. You will also give up your rights to be part of any other lawsuit involving the same legal claims as the ones in this Litigation, and will release all such claims. You need only return this Workweek & Address Correction Form if you wish to (i) correct your mailing information below or (ii) challenge the accuracy of the information below regarding your total pay periods worked during the Class Period. You should also update the Claims Administrator with your new address if you move.

THE DEADLINE FOR SUBMITTING THIS FORM IS [INSERT DATE 60 DAYS FROM MAILING OF NOTICE]. You may contact the Claims Administrator at a later date to update address information, but a delay in updating your address may result in mail or payments being sent to the wrong address.

I. SETTLEMENT CLASS MEMBER IDENTIFICATION

Please Make any Name/Address Corrections Below:

<<First>> <<Last>>
 <<Address1>>
 <<Address2>>
 <<City>> <<State>> <Zip>>

Please correct my address only. I do not dispute my workweeks. (Check box and sign here if you are only correcting your address.)

Dated: _____

 (Signature)

II. GENERAL INFORMATION

The Class includes all current and former non-exempt employees of Defendant, who were hired *before* August 1, 2014 and who worked in California at any time during the Class Period. “Class Period” shall be from October 1, 2014 through August 1, 2020.

YOU WILL SUFFER NO RETALIATION OR ADVERSE ACTION FOR PARTICIPATING IN THIS SETTLEMENT.

This final approval hearing on the adequacy, reasonableness and fairness of the settlement will be held at [] a.m./p.m. on [], 2020 in Department 304 of the San Francisco County Superior Court located at Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102. **You are not required to attend this hearing.**

III. YOUR CLAIM INFORMATION

According to payroll records maintained by Chipotle, the total number of pay periods you worked at Chipotle as an employee in California during the Covered Period (“Workweeks”), is: Workweeks.

Based on your workweeks, the total class members’ workweeks, and the net settlement fund, we estimate your share of the settlement will be approximately \$ if you do not submit a Workweek Correction Form.

IV. IF YOU DISPUTE THE INFORMATION ABOVE

Please complete this Section only if you disagree with the information listed in Section III above.

I dispute the Workweek information in Section III. I believe I worked Workweeks at Chipotle during the time frame referenced above.

If there is a dispute about whether the Workweek information set forth in Section III is accurate, the dispute will be resolved by the Settlement Administrator. If you believe the number of Workweeks as listed in Section III is incorrect, please check the box below and send this signed and completed Form along with copies of any documents (please retain the originals for your records) that support your belief that the information set forth above is incorrect to the Settlement Administrator at the following address:

Turley v. Chipotle
c/o [Claims Administrator Name]
P.O. Box []
[Address]
[Phone Number]
[Fax Number]

Again, you need not take any action to participate in the settlement and you will be bound by the other provisions of the Settlement Agreement approved by the Court. If you make any corrections or dispute the number of Workweeks shown, this Workweek Correction Form will be deemed submitted by you when sent by first class mail and postmarked prior to the deadline. Do not submit this form to the Court.

I dispute my workweeks.

I declare that the foregoing information is true and accurate, and that I have read and understand the Class Notice that was mailed with this Workweek & Address Correction Form.

Dated: _____

(Signature)

REQUEST FOR EXCLUSION FROM CLASS ACTION

TANIKA TURLEY and CHRISTOPHER THOMPSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

CHIPOTLE SERVICES, LLC; a Colorado business entity,

Defendants.

CASE NO. CGC-15-544936

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY

SUBMIT THIS FORM NO LATER THAN _____, 2020 [60 days from mailing] ONLY IF YOU DO NOT WISH TO PARTICIPATE IN THIS SETTLEMENT. THIS EXCLUSION FORM SHOULD BE MAILED TO THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING ADDRESS:

Turley v. Chipotle
c/o [Claims Administrator Name]
P.O. Box [_____] [Address]
[Number]

DO NOT SUBMIT THIS EXCLUSION FORM IF YOU WISH TO PARTICIPATE IN THIS SETTLEMENT. DO NOT FILE THIS EXCLUSION FORM WITH THE COURT.

I do not wish to participate in this class action and choose to exclude myself from this settlement. I understand that by excluding myself, I will be unable to receive any benefits under the Settlement.

Signature

Date

Print Name

List any former names

Address

City, State, Zip Code

[PROPOSED] EMAIL NOTICE TO CLASS MEMBERS

Sender Name: [Phoenix] Settlement Administrators

Subject: Class Action Settlement Notice - Turley v. Chipotle

Dear Class Member,

You are receiving this email because you may be a member of a class on whose behalf this class action lawsuit has been brought.

You have the right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves the settlement and after objections and appeals are resolved, a Claims Administrator appointed by the Court will distribute payments provided in the settlement.

The Class Notice Settlement Materials are being mailed to you at your last known address. The Class Notice Settlement Materials explain the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive them. If you **do not** receive a notice in the mail, or if your address has changed since you worked for Chipotle, please reply to this email to let the Claims Administrator know your current address so that you may receive the Class Settlement Notice Materials.

Additionally, copies of all papers filed in connection with preliminary and final approval, including the Proposed Settlement, the Motion for Preliminary Approval of Class Action Settlement, Order Granting Preliminary Approval to the Settlement, any orders denying attempts to secure preliminary approval, other California cases relating to Chipotle, and Class Notice Settlement Materials may be viewed on the settlement administrator's website at: <<Insert web address>>.

The Court in charge of this case is the San Francisco Superior Court, and the case is known as *Turley v. Chipotle Services, LLC*, Case No. CGC-15-544936. You can view all of the case pleadings without charge on the website for the Superior Court at <https://www.sfsuperiorcourt.org/online-services>.

If you have any questions or desire any additional information, please contact the Claims Administrator at [800-523-5773].

Thank you.

Settlement Administrator
[Phoenix Settlement Administrators]

Exhibit 3

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [David Garrett](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Friday, September 04, 2020 1:41:25 PM

09/04/2020 01:41:18 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://url.emailprotection.link/?bGZPHN_9muQ8X-UtpFfdsk6ZqhrSpwivg1gH2OOeyOm5IteMxMsafsEUc3LraSzbx457A0NiyPvVCzsC_YDIGcNxoZ75GbbJhjHJxFULoUMnGp_LxjepKo8pletURgAY9

Exhibit 4



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	7000
Opt Out Rate	1%
Opt Outs Received	70
Total Class Claimants	6930
Subtotal Admin Only	\$49,500.00

WILL NOT EXCEED \$49,500.00
For 7000 Class Members

July 17, 2020

Case: TANIKA TURLEY V. CHIPOTLE SERVICES, LLC. Opt-Out Admin

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: David Garrett

Firm: HARRIS & RUBLE

Contact Number: 323.962.3777

Email: DGarrett@harrisandruble.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 7000 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	4	\$400.00
Programming Database & Setup	\$100.00	4	\$400.00
Toll Free Setup*	\$163.65	1	\$163.65
Call Center & Long Distance	\$0.15	700	\$105.00
NCOA (USPS)	\$0.05	7000	\$350.00
Email Programming Database & Setup	\$100.00	4	\$400.00
Formatting Notice	\$100.00	3	\$300.00
Email Notice	\$0.11	7000	\$770.00
Total			\$2,888.65

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	6	\$600.00
Data Merge & Duplication Scrub	\$0.015	7,000	\$105.00
Notice Packet & Opt-Out Form	\$1.30	7,000	\$9,100.00
Estimated Postage (up to 2 oz.)*	\$0.55	7,000	\$3,850.00
Claims Processing Website	\$2,000.00	1	\$2,000.00
Language Translation	\$0.15	10,000	\$1,500.00
Total			\$17,155.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	5	\$250.00
Skip Tracing Undeliverables	\$0.50	1,050	\$525.00
Remail Notice Packets	\$1.30	1,050	\$1,365.00
Estimated Postage	\$0.55	1,050	\$577.50
Programming Undeliverables	\$50.00	10	\$500.00
		Total	\$3,217.50

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$100.00	4	\$400.00
Non Opt-Out Processing	\$100.00	4	\$400.00
Case Associate	\$50.00	6	\$300.00
Opt-Outs/Deficiency/Dispute Letters	\$4.00	88	\$350.00
Case Manager	\$80.00	6	\$480.00
		Total	\$1,930.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	4	\$400.00
Disbursement Review	\$100.00	4	\$400.00
Programming Manager	\$90.00	4	\$360.00
QSF Fees, Bank Account & EIN	\$75.00	3	\$225.00
Check/Voucher Run Setup & Printing	\$100.00	8	\$800.00
Mail Class Checks/Vouchers, W2 and 1099	\$1.75	7,043	\$12,325.25
*			
Estimated Postage Checks, W2 and 1099	\$0.55	7,043	\$3,873.65
		Total	\$18,383.90

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	4	\$400.00
Remail Undeliverable Checks (Postage Included)	\$2.00	352	\$704.30
Case Associate	\$55.00	6	\$330.00
Reconcile Uncashed Checks	\$85.00	6	\$510.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$85.00	5	\$425.00
Final Reporting & Declarations	\$100.00	3	\$300.00
Uncashed Check Notice Postcard (Postage Included)	\$0.60	176	\$105.65
Uncashed Check QSF Tax Filing	\$150.00	3	\$450.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$2,500.00	1	\$2,500.00
		Total	\$5,924.95

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$49,500.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Exhibit 5

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MARCUS HARRIS, JULIUS CALDWELL,
DEMARKUS HOBBS, and DANA
EVENSON, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

CHIPOTLE MEXICAN GRILL, INC.,
Defendant.

Case No.: 0:13-cv-01719-SRN-SER

Declaration of David Gottlieb in
Support of Defendant Chipotle
Mexican Grill, Inc.'s Opposition
to Plaintiffs' Motion for
Conditional Collective Action
Certification

I, David Gottlieb, say and declare as follows:

1. I have personal knowledge of the facts described below and would competently testify to those facts.
2. I am currently employed by Chipotle Mexican Grill, Inc. ("Chipotle") as its Director, Compliance and Projects. I have held the same position since April 2010 when Chipotle hired me.
3. As the Director, Compliance and Projects, I have general responsibility for ensuring that employees who work in Chipotle's restaurants are hired and paid in full compliance with the law. I also lead our compliance team, who, among other things, is responsible for resolving any issues raised by any of Chipotle's restaurant employees, including concerns about their work environment or pay.

Chipotle's Business

4. Chipotle operates fresh Mexican food restaurants serving a focused menu of burritos, tacos, burrito bowls and salads. Chipotle demonstrates that food served fast does not have to be a traditional “fast food” experience. It does so by using high-quality raw ingredients, classic cooking methods, and by hiring friendly employees to take care of each customer.

5. Chipotle’s approach is also guided by an idea called “Food With Integrity,” which involves finding the highest quality ingredients to serve in its restaurants. Chipotle seeks ingredients that are grown or raised with respect for the environment, animals and the people who grow or raise the food.

6. Chipotle similarly seeks top performing employees, whom it empowers and develops into future leaders of the company. Consistent with its principles, Chipotle expects all of its employees to treat other employees honestly and fairly, with respect and integrity.

Chipotle’s Operational Framework

7. Chipotle operates more than 1,500 restaurants, including restaurants located throughout the United States in 43 states and the District of Columbia, as well as more than a dozen located outside the United States.

8. Chipotle’s domestic operations and restaurants are divided into the following seven regions based upon geographic location: Central, Mid Atlantic, Northeast, Pacific, Rocky Mountain, Southeast, and Southwest.

9. Chipotle employs Regional Directors or Executive Team Directors who have overall responsibility for the operations of all restaurants located in their regions.

10. All regions are required to comply with Chipotle's national written policies regarding timekeeping and pay. The regions may, and do, differ in other substantive ways, including budgeting, personnel, and management decisions. Chipotle does not have a uniform manner in which personnel decisions are made or in which management duties, such as staffing or scheduling, are carried out throughout all regions or even all restaurants within a region.

11. While personnel decisions and management duties are carried out in different ways throughout the regions – based on the management styles of thousands of different persons at different levels of authority – all are required to comply with Chipotle's policies of recording all time worked, prohibiting off-the-clock work, and properly compensating all hourly-paid employees for all hours worked.

12. Working under each Regional Director or Executive Team Director is a team of field support leaders who are responsible for assisting the Regional Directors. The leadership structure of the field support team varies from region to region, but generally includes several positions such as Team Directors, Area Managers, Team Leaders and Apprentice Team Leaders, each of whom may be empowered to make any number of budgeting, personnel and management decisions.

13. At the restaurant level, a single restaurant may be staffed, in order of descending authority, by a General Manager, one or more Apprentice Managers, one or more Service Managers, one or more Kitchen Managers and a range of 15 to 35 full and part-time employees known as crew members. The General Manager and Apprentice in each restaurant are primarily responsible for supervising and directing the managers and crew members who work in that restaurant and creating superb people cultures in their restaurant. Crew members are responsible for preparing and serving food, as well as other activities.

14. The size of a crew and the number of managers varies from restaurant to restaurant based on factors such as sales volume and hours of operation. Some restaurants do not have a General Manager, and some have two or more Apprentice Managers.

15. The General Manager and Apprentice Managers may have different managerial styles and preferences, different managerial experience, and varying skills. General Managers who have been recognized for their excellent performance are given the title of Restaurateur. A Restaurateur performs all of the same duties as a General Manager. Restaurateurs who continue to excel may take on the additional responsibility of overseeing or mentoring up to three additional restaurants.

16. Each restaurant's General Manager (who may have the title Restaurateur) or Apprentice responsible for each restaurant, with the assistance of the Service Manager(s) and Kitchen Manager(s) – are responsible for deciding, for their restaurant, whether, when, and how much each of the other managers and

crew members assigned to the restaurant will work. No one other than the managers assigned to that specific restaurant make those determinations.

Chipotle's Hourly Restaurant Employees

17. In its United States restaurants, Chipotle currently employs more than 40,000 hourly employees. Approximately 1,600 of those employees work in Minnesota. In any given year, because of employee turnover, Chipotle employs approximately 90,000 hourly employees in its domestic restaurants.

18. Of its restaurant employees, Chipotle's Service Managers, Kitchen Managers, and crew members are paid an hourly wage for all hours and portions of hours worked for Chipotle. They are also paid appropriate overtime pay in accordance with the requirements of state and federal laws. Chipotle's Restaurateurs, General Managers, and Apprentices are paid a salary and classified as exempt managers in most states.

19. Throughout 2012, Chipotle began hiring some of its hourly-paid restaurant employees through a web-based application system, which asks an applicant to provide an e-mail address. This system became available to different groups of Chipotle restaurants at different points during 2012. Prior to the implementation of this system throughout 2012, Chipotle did not require or request that hourly-restaurant employees provide an e-mail address at the time of application or at any other point during their employment. If an employee had provided an e-mail address, Chipotle would not have cataloged it or maintained it in any central location. Chipotle has not required or requested employees hired

prior to implementation of the web-based system to provide an e-mail address.

Chipotle does not provide hourly-paid restaurant employees with individual

Chipotle e-mail addresses. As a result, Chipotle does not have e-mail addresses for

hourly-paid restaurant employees hired prior to 2012. Because of the incremental

rollout of its web-based application system throughout 2012, Chipotle does not have

e-mail addresses for many hourly-paid restaurant employees hired during 2012.

Plaintiffs' Employment With Chipotle

20. I have reviewed Chipotle's records related to Plaintiff Marcus Harris. Chipotle's records indicate that Chipotle currently employs Mr. Harris as a crew member at its Crystal, Minnesota restaurant (the "Crystal restaurant"). Chipotle's records indicate that Chipotle has never employed Mr. Harris at any restaurant other than the Crystal restaurant. Chipotle's records indicated that Mr. Harris was hired January 7, 2013, and that he acknowledged in writing that he had read, understood and would adhere to the policies and procedures contained in the Crew Handbook.

21. I have reviewed Chipotle's records related to Plaintiff Julius Caldwell. Chipotle's records indicate that Chipotle hired Mr. Caldwell as a crew member on May 4, 2012; that Chipotle promoted him to Kitchen Manager on August 13, 2012; and that Chipotle promoted him to Service Manager on September 10, 2012. Each of those positions was at the Crystal restaurant. Chipotle's records indicate that Chipotle has never employed Mr. Caldwell at any restaurant other than the Crystal restaurant. Chipotle's records indicate that Mr. Caldwell acknowledged in writing

that he had read, understood and would adhere to the policies and procedures contained in the Crew Handbook. Mr. Caldwell ceased to be employed by Chipotle as of July 9, 2013.

22. I have reviewed Chipotle's records related to Plaintiff Demarkus Hobbs. Chipotle's records indicate that Chipotle employed Mr. Hobbs as a crew member at the Crystal restaurant. Chipotle's records indicate that Chipotle has never employed Mr. Hobbs at any restaurant other than the Crystal restaurant. Chipotle's records indicate that Mr. Hobbs was hired as of May 25, 2012, and that he acknowledged in writing that he had read, understood, and would adhere to the policies and procedures contained in the Crew Handbook. Mr. Hobbs left Chipotle's employ as of June 6, 2013.

23. I have reviewed Chipotle's records related to Plaintiff Dana Evenson. Chipotle's records indicate that Chipotle employed Ms. Evenson as a crew member on February 19, 2012; that Chipotle promoted her to Kitchen Manager on October 8, 2012; and that Chipotle promoted her to Service Manager on January 14, 2013. Each of those positions was at the Crystal restaurant. Chipotle's records indicate that Chipotle has never employed Ms. Evenson at any restaurant other than the Crystal restaurant. Chipotle's records indicate that Ms. Evenson acknowledged in writing that she had read, understood and would adhere to the policies and procedures contained in the Crew Handbook. Ms. Evenson ceased to be employed by Chipotle as of June 27, 2013.

Chipotle's Timekeeping Policy

24. Chipotle maintains and distributes a Timekeeping Policy that applies to all of its hourly restaurant employees. The Timekeeping Policy is a part of Chipotle's Crew Handbook, which it distributes to all crew members and makes available in its restaurants. Attached as **Exhibit 1** to this declaration is a true and correct copy of the current version of Chipotle's Crew Handbook, which has been in effect since April 2012. Chipotle's Timekeeping Policy begins on page 22 of the Crew Handbook.

25. Chipotle requires every crew member to review a copy of the Crew Handbook and complete a form attesting that he or she has reviewed, understood and will adhere to the Crew Handbook.

26. Prior to April 2012, a similar version of Chipotle's Crew Handbook was in effect. That version is attached to this declaration as **Exhibit 2**. It went into effect in January 2011 and remained in effect until it was replaced in April 2012.

27. Chipotle's Timekeeping Policy also applies to its hourly restaurant managers. To that end, Chipotle includes a version of its Timekeeping Policy in its Restaurant Management Handbook, which it distributes to all restaurant managers and makes available in its restaurants. Attached as **Exhibit 3** to this declaration is a true and correct copy of the current version of Chipotle's Restaurant Management Handbook, which has been in effect since April 2012. Chipotle's Timekeeping Policy begins on page 19 of the Restaurant Management Handbook.

28. Chipotle requires every employee who occupies a restaurant management position to review a copy of Chipotle's Restaurant Management Handbook.

29. Prior to April 2012, a similar version of Chipotle's Restaurant Management Handbook was in effect. That version is attached to this declaration as **Exhibit 4**. It went into effect in January 2011 and remained in effect until it was replaced in April 2012.

30. Exhibits 1, 2, 3 and 4 correctly reflect Chipotle's policies regarding timekeeping. Chipotle does not have an unwritten policy that contradicts its written policy regarding timekeeping. Chipotle's Timekeeping Policy explicitly provides that all hourly employees must be paid for all time worked. It clarifies that time worked includes all of the work hourly employees might do, such as work performed before or after a scheduled shift, all meetings, and all time spent training. The policy prohibits any off-the-clock work.

31. Chipotle's Timekeeping Policy requires hourly employees to record all time worked and meal times. Chipotle pays hourly employees during all of their breaks, including off-duty meal and rest periods.

32. In addition to receiving the Timekeeping Policy in the Crew Handbook or Restaurant Management Handbook, Chipotle's hourly employees are to receive information about the Timekeeping Policy in several other ways. For example, Chipotle directs its Restaurateurs, General Managers, and Apprentices to review the procedures for timekeeping with newly hired employees.

Chipotle's Timekeeping System

33. Chipotle requires its hourly employees to record their time worked using the "point-of-sale" or "POS" system in the restaurant. The computer system is called "Aloha." The same computer system and terminal are used to process and record transactions with customers. Employees can clock in or clock out of the system by using a swipe card or entering a set of numbers provided by Chipotle.

34. When an employee clocks out for the day, Aloha prints out a receipt at the POS terminal that contains a statement of the employee's time worked that day. This makes it easy for the employee to confirm that the employee has accurately recorded all hours worked. It also enables the employee to identify with the employee's manager any discrepancy between his time worked and his Aloha record for that day.

Chipotle's Time Punch Policy

35. Although Chipotle requires its hourly restaurant employees to record all the time they work using Aloha through the POS terminal, it may be necessary for a manager to adjust an employee's time record to ensure that it accurately reflects all time worked by the employee. This might happen when an employee forgets to clock in before starting work for the day or forgets to clock out after finishing work. It might also happen if an hourly employee was working outside the restaurant, if the restaurant was not open yet, if the POS terminal was temporarily not operational, or if Aloha reset while the employee was working.

36. In recognition of the fact that adjustments to an employee's POS entry may be necessary in order to pay the employee accurately for all time worked, an entry can be corrected through a "time punch edit."

37. Chipotle's Time Punch Policy provides that edits should be rare, and that they are permitted in limited circumstances, including when an hourly employee forgets to punch in or punch out or is working away from the restaurant and could not punch in or punch out. The Time Punch Policy also provides that time actually worked may never be edited away from an employee, even if the employee's hours are more than expected.

38. When managers need to make adjustments to an hourly employee's POS entry, the Time Punch Policy requires that the hourly employee review and approve each adjustment. Crew members are not permitted to adjust any time entries. When authorized by a General Manager, an hourly-paid manager may edit another hourly-paid manager's time entry, but a lower level manager is not permitted to edit a higher level manager's time entry.

39. Chipotle distributes its Time Punch Policy to its employees through both its Crew Handbook and Restaurant Management Handbook. The Time Punch Policy starts on page 22 of the current version of the Crew Handbook (**Exhibit 1**) and page 19 of the current version of the Restaurant Management Handbook (**Exhibit 3**).

40. Chipotle's Time Punch Policy, as set forth in the Restaurant Management Handbook, provides that hourly employees must be paid for all time

worked and that Chipotle will take all steps to prevent and remedy violations of this requirement. It further provides that Chipotle will take disciplinary action, up to and including termination, for any manager's failure to pay all hourly employees for all time worked.

Chipotle's POS Reset

41. Chipotle's POS system, as a result of Aloha, automatically resets at 12:30 a.m. in most of its restaurants. This has the effect of clocking out any employee who is clocked in when the reset occurs. Chipotle's Time Punch Policy, in its Crew Handbook and Restaurant Management Handbook, informs employees of the reset and instructs them about the need for an adjustment to their time entry in the event that they are still working at 12:30 a.m. Employees who work later than 12:30 a.m. may also clock in again after the system resets.

42. The Time Punch Policy provides that managers should be extra careful to make sure that if hourly employees are working past 12:30 a.m., their POS entry is edited to reflect this and that they are paid for any time they worked past 12:30 a.m. It also provides that working past 12:30 a.m. should be a very rare occurrence. Because the vast majority of employees work earlier shifts and most Chipotle restaurants close to customers at 10:00 p.m., Chipotle expects that most of its employees stop work long before 12:30 a.m. and are not affected by the reset function.

43. Any Chipotle manager who fails to edit an hourly employee's POS entry to reflect that an employee had worked past 12:30 a.m. would be in violation

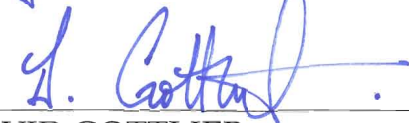
of Chipotle's Timekeeping and/or Time Punch Policy, if such an edit was necessary to accurately reflect all time worked by the hourly employee and the manager knew of the need for the edit.

44. Any Chipotle manager who directed or knowingly permitted (or should have known but permitted) an hourly employee to work without creating an accurate record of all of the hourly employee's time, such that the hourly employee would not be paid for all time worked, would be in violation of Chipotle's Timekeeping and/or Time Punch Policy. Likewise, any Chipotle manager who knowingly made an inaccurate edit or adjustment to an hourly employee's time entry, such that the hourly employee would not be paid for all time worked, would be in violation of Chipotle's Timekeeping and/or Time Punch Policy.

45. If hourly employees have any questions or concerns about the Timekeeping Policy and/or Time Punch Policy, or about their pay in general, they can contact any of their managers, field leaders, or one of Chipotle's two, free, confidential, twenty-four-hour hotlines. One of Chipotle's compliance specialists, who reports to me, will address any concerns or answer any questions received through the hotlines. Chipotle also directs its managers to display a poster with the hotline information in the employee area of all of Chipotle's restaurants, and the hotline information is also contained in the Crew Handbook and Restaurant Management Handbook.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on December 6th, 2013 at Denver, Colorado.



DAVID GOTTLIEB

Exhibit 6

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

---oOo---

TANIKA TURLEY, individually,)
and on behalf of all others)
similarly situated,)
)
Plaintiff,)
)
vs.)
) No. CGC-15-544936
)
CHIPOTLE SERVICES, LLC, a)
Colorado business entity, and)
DOES 1 through and including)
DOE 100,)
)
Defendants.)
)
)
-----)

DEPOSITION OF EDWARD STINSON,
PMK CHIPOTLE SERVICES, LLC
Thursday, June 8, 2017
MILL VALLEY, CALIFORNIA

REPORTED BY: A. MAGGI SAUNDERS,
C.S.R. No. 2755

I N D E X

WITNESS: EDWARD STINSON, PMK CHIPOTLE

	<u>Page</u>
Examination by MR. HARRIS	6
AFTERNOON SESSION:	
Examination Resumed by MR. HARRIS	104

E X H I B I T S

FOR PLAINTIFF	<u>Page</u>
14 Chipotle Crew Handbook, multipage	32
15 Multipage "Crew Handbook"	73
16 Defendant's Responses and Objections to Plaintiff's Notice of Taking the Deposition of Person Most Knowledgeable	87
17 Crew Performance Review	118
18 E-mail from Hart to Stinson, Christianson, May 8, 2014	125
19 Chipotle "Status Change Form"	126
20 Check dated January 17, 2015	134
21 Documents stamped Nos. Chip-1 - 50	166
22 Multipage document titled Industrial Welfare Commission,	213

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Order No. 5-2001, Regulating Wages,
Hours and Working Conditions in the
Public Housekeeping Industry,
Effective January 1, 2002, as
amended

1 BE IT REMEMBERED that, pursuant to Notice
2 of Taking Deposition, and on Thursday, the 8th day of
3 June, 2017, commencing at the hour of 10:00 o'clock
4 a.m. thereof, at the NORTH BAY LAW GROUP, 116 East
5 Blithedale Avenue, Suite 2, Mill Valley, California
6 94941, (415) 388-8788, before me, A. MAGGI SAUNDERS,
7 a Certified Shorthand Reporter in and for the State
8 of California, there personally appeared for oral
9 deposition,

10

11 EDWARD STINSON, PMK CHIPOTLE SERVICES, LLC,

12

13 called as a witness by the Plaintiff TANIKA TURLEY,
14 et al., who, being by me first duly sworn, was
15 thereupon examined and interrogated as hereinafter
16 set forth.

17

18 ----oOo----

19

20

21

22

23

24

25

A P P E A R A N C E S

HARRIS & RUBLE, 655 North Central Avenue,
17th Floor, Glendale, California 91203, (323)
962-3777, represented by ALAN HARRIS, ESQ., appeared
as counsel on behalf of Plaintiff, TANIKA TURLEY, et
al.

MESSNER REEVES, LLP, 11620 Wilshire
Boulevard, Suite 500, Los Angeles, California 90025,
(310) 909-7440, represented by ERIC DE WAMES, ESQ.,
appeared as counsel on behalf of Defendants CHIPOTLE
SERVICES, LLC, et al., and the Witness herein, EDWARD
STINSON.

DEPOSITION OF EDWARD STINSON - PMK CHIPOTLE SERVICES

1 THURSDAY, JUNE 8, 2017 - 10:00 O'CLOCK A.M.

2
3 MILL VALLEY, CALIFORNIA

4
5 ----oOo----

6 EDWARD STINSON, PMK CHIPOTLE SERVICES, LLC,
7 called as a witness herein, being first duly sworn by
8 the Certified Shorthand Reporter to tell the truth,
9 the whole truth, and nothing but the truth, testified
10 as follows:

11 EXAMINATION BY MR. HARRIS:

12 MR. HARRIS: Q. Sir, could you state your
13 full name and current residence address for the record?

14 A. Yeah. My name is Edward Stinson. I
15 reside at 1700 --

16 MR. DE WAMES: Wait. Objection, as to his
17 location of address. He can be contacted through
18 counsel of the record.

19 I'm going to instruct him not to answer
20 as to your personal address or phone number. And if
21 Mr. Stinson leaves for any reason, Chipotle will
22 provide his last known contact information to you.

23 MR. HARRIS: And will you agree to accept
24 service of a Trial Subpoena?

25 MR. DE WAMES: Yes, we will.

1 Q. Now, is it your understanding that the
2 stores for which you have responsibility are required
3 to comply with Chipotle national written policies
4 regarding timekeeping?

5 MR. DE WAMES: Can you read that back for
6 me, please.

7 (The following question was read by
8 the Reporter as requested:

9 "Question: Now, is it your
10 understanding that the stores for
11 which you have responsibility are
12 required to comply with Chipotle
13 national written policies regarding
14 timekeeping?")

15 MR. DE WAMES: Outside the scope of the
16 PMK. Lacks foundation. Assumes a false premise.
17 Calls for speculation.

18 THE WITNESS: Restaurants are expected to
19 comply with any written policies existing in, you know,
20 the national Chipotle literature or, you know, policies
21 that are available to them, yes.

22 MR. HARRIS: Q. And you understand there
23 has been since 2014 to-date a national written policy
24 regarding timekeeping, true?

25 MR. DE WAMES: Objection. Vague as to the

1 term "national written policy". It lacks foundation.
2 Assumes a false premise. Calls for speculation.
3 Outside the scope of the PMK.

4 THE WITNESS: Every manager understands
5 that the policy for timekeeping that is written, you
6 know, in the Chipotle Handbook and elsewhere is to be
7 followed, yes.

8 MR. HARRIS: Q. Okay. Now, to whom do
9 you presently report?

10 A. Stephen Hart.

11 Q. And what is his present title?

12 A. Executive Team Director.

13 MR. HARRIS: Okay. I think the Court
14 Reporter is getting hungry, and so we'll take a short
15 lunch break and come back at 1:30.

16 MR. DE WAMES: Do we need a full hour?

17 MR. HARRIS: Sure, let's take an hour.

18 MR. DE WAMES: All right.

19 (Luncheon recess taken from 12:30 p.m. to
20 1:34 p.m.)

21

22 ----oOo----

23

24

25

STATE OF CALIFORNIA)
) ss.
)

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 17th day of June, 2017.

A. Maggi Saunders

A. MAGGI SAUNDERS, C.S.R. No. 2755,
Certified Shorthand Reporter,
In and For the State of California