



**FILED**  
San Francisco County Superior Court

JAN 14 2021

CLERK OF THE COURT  
BY: [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 304

TANIKA TURLEY, ET AL.,  
Plaintiffs,

v.

CHIPOTLE SERVICES, LLC, ET AL.,  
Defendants.

Case No. CGC-15-544936

ORDER RE PROPOSED INTERVENOR  
JOSH BARBER'S EX PARTE  
APPLICATION RE: REQUEST TO  
INTERVENE

The above-entitled matter came on regularly for hearing on an ex parte basis on Thursday, January 14, 2021. The appearances are as stated in the record. Having considered the written submissions of the parties and the argument of counsel, the Court orders as follows: (1) A hearing on Josh Barber's request to intervene will be held on February 11, 2021 at 2:00 p.m.; (2) The ex parte application papers will be treated as the moving papers; and (3) Barber will promptly file a notice of motion setting forth the hearing date. The deadlines for the opposition and reply are per code.

In one previous instance in this action, the Court resolved a request to intervene made by way of an ex parte application on the merits. The Court declines to do so here. Pursuant to Code of Civil Procedure § 387(c), a request for leave to intervene must be made "by noticed motion or ex parte application." The Court does not read the statute to permit a proposed intervenor to request leave to intervene on an ex parte basis without making an affirmative factual showing in a declaration containing

1 competent testimony based on personal knowledge of some exigency requiring the consideration of the  
2 issue on an ex parte basis, as opposed to through a noticed motion. (See Cal. Rules of Court, rule  
3 3.1202.)

4 There is no exigency here. Barber requests leave to intervene so that he may object at the final  
5 approval hearing. The final approval hearing is set for February 19, 2021. There is ample time between  
6 now and then to address Barber's request for leave to intervene with due consideration. Moreover, Barber  
7 has long been aware of these public proceedings. Barber unsuccessfully attempted to intervene in  
8 February 2020. (See Feb. 18, 2020 Order, 1.) The Court granted preliminary approval on October 2,  
9 2020. There was, and remains, ample time for a noticed motion to intervene between preliminary  
10 approval and final approval.

11 Notably, Barber's ex parte application included: (1) A fifteen-page brief; (2) A 701-page notice of  
12 errata, to which the operative version of the evidentiary declaration was attached; and (3) a 296-page  
13 request for judicial notice. These papers were filed throughout the course of the day on January 13, 2021.  
14 Put differently, Barber would like the Court to grant his ex parte application based on a record that spans  
15 more than one thousand pages. In spite of the size of this record, the Court does not find the required  
16 language justifying entering a ruling on an ex parte basis. (Compare Jimenez Gaytan Decl. ¶¶ 1-22; with  
17 Cal. Rules of Court, rules 3.1202(c), 3.1204(b)(1).) The Court will not resolve the underlying dispute on  
18 an ex parte basis.

19 IT IS SO ORDERED.

20 Dated: January 14, 2021



21  
22 Anne-Christine Massullo  
23 Judge of the Superior Court  
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**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.251)

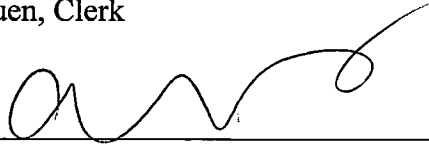
I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On January 14, 2021, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: January 14, 2021

T. Michael Yuen, Clerk

By: \_\_\_\_\_

  
Ericka Larnauti, Deputy Clerk