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6 Attorneys for Plaintiffs and the Proposed
 Class

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10

11 HUNTER C. LEPPARD, a minor, by
 and through his guardian ad litem,
 12 RICHARD R. LaSECLA, JR.; KARL
 KNISELEY, IV, a minor, by and
 13 through his guardian ad litem, KARL
 KNISELEY, III; BRYCE PHILLIPS, a
 14 minor, by and through his guardian ad
 litem, MIA PHILLIPS; MIA
 15 PHILLIPS, an individual; SISTO
 ZELE, a minor, by and through his
 16 guardian ad litem, LOUIE S. ZELE;
 LOUIE ZELE, a minor, by and through
 17 his guardian ad litem, LOUIE S. ZELE;
 MICHAEL ZELE, a minor, by and
 18 through his guardian ad litem, LOUIE
 S. ZELE; on behalf of themselves and a
 19 class of those similarly situated,

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Plaintiffs,

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vs.

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CHIPOTLE MEXICAN GRILL, INC.,
 a Delaware Corporation,

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Defendant.

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Case No. 2:16-cv-00399

**CLASS ACTION COMPLAINT
 FOR DAMAGES**

JURY TRIAL DEMANDED

1 COME NOW the Plaintiffs, HUNTER C. LEPPARD, a minor, by and
2 through his guardian ad litem, RICHARD R. LaSECLA, JR.; KARL KNISELEY,
3 IV, a minor, by and through his guardian ad litem, KARL KNISELEY, III; BRYCE
4 PHILLIPS, a minor, by and through his guardian ad litem, MIA PHILLIPS; MIA
5 PHILLIPS, an individual; SISTO ZELE, a minor, by and through his guardian ad
6 litem, LOUIE S. ZELE; LOUIE ZELE, a minor, by and through his guardian ad
7 litem, LOUIE S. ZELE; MICHAEL ZELE, a minor, by and through his guardian ad
8 litem, LOUIE S. ZELE; on behalf of themselves and a class of those similarly
9 situated, by the through their counsel of record, and allege as follows:

10 **INTRODUCTION**

11 1. Defendant Chipotle Mexican Grill, Inc. (hereinafter "Chipotle") is a
12 corporation that develops and operates fast-casual, fresh Mexican food restaurants.
13 As of September 30, 2015, Chipotle operated 1,895 restaurants throughout the
14 United States, according to its Form 10-Q filed with the U.S. Securities and
15 Exchange Commission ("SEC") on October 21, 2015.

16 2. At all times relevant herein, Chipotle was registered to do business in
17 the County of Ventura, State of California, and owned and operated a restaurant
18 located at 1555 Simi Town Center Way, Simi Valley, California (hereinafter "Simi
19 Valley restaurant").

20 3. Plaintiffs seek to represent themselves and all similarly-situated
21 persons in California who were infected with the Norovirus and became sick with
22 gastrointestinal illness after eating adulterated food at Chipotle's Simi Valley
23 restaurant between August 18 – 20, 2015 (the "putative class"). Plaintiffs seek
24 damages for their personal injuries and medical costs, restitution for the price paid
25 for the adulterated food, in addition to injunctive and equitable relief that this Court
26 determines to be necessary to provide complete relief to Plaintiffs and the Class.

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THE PARTIES

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2 4. Plaintiffs, Hunter Leppard, Karl Kniseley, IV, Sisto Zele, Louie Zele,
3 Michael Zele and Bryce Phillips are all minors and students who attend Grace
4 Brethren School, located in Simi Valley, California.

5 5. Plaintiff, Mia Phillips, is an individual and cheerleading coach at Grace
6 Brethren School in Simi Valley, California.

7 6. All of the Plaintiffs are residents of the City of Simi Valley, County of
8 Ventura, State of California.

9 7. Defendant, Chipotle Mexican Grill, Inc., is a Delaware corporation
10 with its headquarters located at 1401 Wynkoop Street, Suite 500, Denver, Colorado.
11 Chipotle's shares trade on the NYSE under the ticker symbol "CMG".

JURISDICTION AND VENUE

12
13 8. This Court has subject matter jurisdiction over this action pursuant to
14 28 U.S.C. § 1391(b)(2), because a "substantial part of the events or omissions giving
15 rise to the claim" set forth in this action occurred within this district.

16 9. This Court has personal jurisdiction over the parties in this action by
17 the fact that Defendant is a corporation that is authorized to conduct business in
18 California and it has intentionally availed itself of the laws and markets of
19 California through the promotion, marketing, and operation of its restaurants located
20 in California.

21 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b),
22 because a substantial part of the events or omissions giving rise to the Plaintiffs'
23 claims occurred in this District. Venue is also proper under 18 U.S.C. § 1965(a),
24 because Defendant transacts a substantial amount of its business in this District.

FACTUAL ALLEGATIONS

25
26 **Norovirus:**

27 11. According to the Centers for Disease Control and Prevention ("CDC")
28 Norovirus, also known as the "Norwalk virus", is the leading cause of illness and

1 outbreaks from contaminated food in the United States. Restaurant workers who are
2 infected with Norovirus can shed billions of Norovirus particles on food and food
3 preparation surfaces. The virus can easily contaminate food because it is very tiny.
4 It only takes a very small amount of virus particles (as few as 18) to make someone
5 sick. See, <http://www.cdc.gov/norovirus/food-handlers/work-with-food.html>.

6 12. Norovirus can be spread by person-to-person transmission, or by eating
7 contaminated food and water, or by touching surfaces contaminated with the virus.
8 Humans are the only host of Norovirus. The virus causes painful inflammation of
9 the stomach and intestines, called acute gastroenteritis.

10 13. Norovirus usually develops 24-48 hours after ingestion of contaminated
11 food. Symptoms include nausea, vomiting, diarrhea, abdominal pain, headache and
12 low-grade fever. Although symptoms usually last only a day or two in most healthy
13 persons, Norovirus infections can become quite serious in children, the elderly and
14 immune-compromised individuals. According to the CDC, Norovirus accounts for
15 56,000 – 71,000 hospitalizations and 570 – 800 deaths each year in the United
16 States.

17 **The Chipotle Norovirus Outbreak in Simi Valley:**

18 14. Plaintiffs are informed and believe that Chipotle's kitchen manager,
19 "Ben S." of its Simi Valley restaurant had gastrointestinal symptoms while working
20 at the restaurant on Tuesday, August 18, 2015, but was allowed to continue to work
21 at the restaurant between August 18 -20, 2015 preparing and handling food in
22 violation of Chipotle's corporate policy and state and federal food safety laws.
23 Plaintiffs are further informed and believe that Chipotle's kitchen manager "Ben S."
24 did not see a doctor until Thursday, August 20, 2015, when he was diagnosed with
25 Norovirus and told not to return to work.

26 15. Plaintiffs are informed and believe that on Thursday, August 20, 2015,
27 in response to multiple customer complaints of gastrointestinal illness sustained over
28 the prior two days, Chipotle initiated its "Norwalk Protocol" and closed its Simi

1 Valley restaurant to the public. Plaintiffs are informed and believe that Chipotle's
2 corporate policy is to initiate the "Norwalk Protocol" after two or more customers
3 complain of foodborne illness. Thus, by initiating the "Norwalk Protocol" on
4 Thursday, August 20, 2015, Chipotle knew it was highly likely that a Norovirus
5 outbreak had occurred at its Simi Valley restaurant earlier that week. However,
6 rather than immediately contacting the Ventura County Public Health Division to
7 notify health officials and its customers of this foodborne illness outbreak, Chipotle
8 chose instead to try and conceal all evidence of the outbreak by disposing of all food
9 items, bleaching all cooking and food handling surfaces and replacing its sick
10 employees with replacement employees from other restaurants before notifying
11 county health officials of the outbreak. Doug Beach, manager of the food safety
12 program for Ventura County Environmental Health Division, was quoted in a
13 published media report saying, "Because they had already thrown out all food,
14 completely cleaned the place up, went top to bottom with bleach, and brought in a
15 new staff, we didn't have the opportunity to sample food or do some of the things we
16 normally do to investigate a foodborne outbreak." (See,
17 [http://www.vcstar.com/news/local/simi-valley/us-attorney-investigating-norovirus-
20 outbreak-at-simi-valley-chipotle--28aeee73-1aec-7302-e053-010000-
21 364454861.html](http://www.vcstar.com/news/local/simi-valley/us-attorney-investigating-norovirus-
18 outbreak-at-simi-valley-chipotle--28aeee73-1aec-7302-e053-010000-
19 364454861.html)).

22 16. Plaintiffs are informed and believe that Chipotle attempted to cover up
23 and conceal evidence of this Norovirus outbreak because Chipotle was
24 simultaneously dealing with another public relations disaster regarding another
25 foodborne illness outbreak in Minnesota and wanted to protect its stock price from
26 plummeting by putting corporate profits ahead of public health and safety.
27 Specifically, between August 19 and September 3, 2015 sixty-four (64) customers
28 of twenty-two (22) Chipotle restaurants in Minnesota were sickened from a
salmonella outbreak. Between August 18, 2015 and September 4, 2015, Chipotle's
stock price fell \$26.29 or 3.6% on news of these two outbreaks.

1 17. On Friday, August 21, 2015, Chipotle reopened its Simi Valley
2 restaurant to the public with a new crew of employees from other Chipotle
3 restaurants.

4 18. Plaintiffs are informed and believe that an official at Chipotle's
5 corporate office waited until Saturday, August 22, 2015 to leave a voicemail
6 message with VCEHD notifying public health officials that 17 of its employees who
7 worked at the Simi Valley restaurant were sick with gastrointestinal illness and had
8 been replaced with a new crew from other Chipotle restaurants. The timing of this
9 notification is suspect, as Chipotle knew that VCEHD could not conduct an
10 inspection of the Simi Valley restaurant until the following Monday, August 24,
11 2015 after Chipotle had already "thrown out all the food, completely cleaned the
12 place up, went top to bottom with bleach, and brought in a new staff." Doug Beach
13 of VCEHD was quoted in the Ventura County Star newspaper as saying the county
14 health officials don't "know exactly what the restaurant did between the 18th and 21st
15 as far as who they knew was sick on their staff, did they send them home, did they
16 keep them there? Had we known earlier, we potentially could have prevented more
17 people from getting sick." [http://www.vcstar.com/news/local/simi-valley/us-
18 attorney-investigating-norovirus-outbreak-at-simi-valley-chipotle--28ae73-1aec-
19 7302-e053-010000-364454861.html](http://www.vcstar.com/news/local/simi-valley/us-attorney-investigating-norovirus-outbreak-at-simi-valley-chipotle--28ae73-1aec-7302-e053-010000-364454861.html).

20 19. On Monday, August 24, 2015, VCEHD conducted an inspection of
21 Chipotle's Simi Valley restaurant. Even though this inspection occurred *after*
22 Chipotle "went top to bottom with bleach", had thrown out all of the food and
23 replaced its employees with new staff, VCEHD still found multiple violations of the
24 Health & Safety Code, including the following:

- 25 a. Food handlers did not possess a valid food handler certification card
26 (H & S Code §113948);
27 b. Flying insects were observed within the food facility (H&S Code
28 §114259 & 114259.1);

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- 1 c. Equipment was not clean, including mildew inside the ice machine and
2 an accumulation of grease and food debris in the deep fryer (H&S Code
§114175);
- 3 d. Floors, walls and ceiling were in an unsanitary condition (H&S Code
4 §114257);
- 5 e. Restroom was unclean or in disrepair (H&S Code §114250 & 114276);
- 6 f. Drain line from the customer self-service soda fountain was directly
7 connected to the sewer (H&S Code §114193)

8 20. The investigation by VCEHD and Ventura County Public Health
9 Division (the "Investigation") also revealed that during the week of August 18,
10 2015, a total of 234 customers and employees reported gastrointestinal illness to
11 VCEHD. Based upon a review of Chipotle's logs and records, VCEHD has
12 concluded that an estimated 1,500 entrees were sold each day on August 18 and 19,
13 2015, and thus the actual number of customers who became ill from this norovirus
14 outbreak is likely to be substantially higher than the reported number of 234
15 persons.

16 21. As part of the Investigation, VCEHD ordered that all affected
17 restaurant employees submit stool specimens for laboratory analysis in an attempt to
18 determine the cause of the outbreak. Plaintiffs are informed that 9 restaurant
19 employees of Chipotle's Simi Valley restaurant tested positive for Norovirus as did
20 several of the customers who became sick with gastrointestinal illness. The
21 Investigation concluded that the cause of the foodborne illness outbreak was
22 Norovirus.

23 22. The Investigation also revealed that of the restaurant customers who
24 became ill after eating at Chipotle's Simi Valley restaurant the week of August 18,
25 2015, "a highly susceptible population of seventeen children from Grace Brethren
26 School in Simi Valley" were among those who had complained to Chipotle's
27 corporate office of their illnesses. According to VCEHD records, ages of the victims
28 of this Norovirus outbreak range from 7 years to 67 years old.

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1 23. On January 6, 2015, Chipotle filed a Form 8-K with the Securities and
2 Exchange Commission, disclosing that in December of 2015, Chipotle had been
3 served with a federal grand jury subpoena from the U.S. District for the Central
4 District of California in connection with an official criminal investigation being
5 conducted by the U.S. Attorney's Office, in conjunction with the U.S. Food and
6 Drug Administration's Office of Criminal Investigation concerning the Norovirus
7 outbreak in August 2015 at the Simi Valley restaurant.

8 **Hunter Leppard's Norovirus Infection**

9 24. At all relevant times herein alleged, Hunter Leppard was 17 years old
10 and a senior at Grace Brethren High School in Simi Valley, California. Hunter is a
11 captain on Grace Brethren High School's varsity football team and frequently eats at
12 Chipotle's Simi Valley restaurant. On August 18, 2015, Hunter and several fellow
13 classmates from Grace Brethren High School purchased lunch at Chipotle's Simi
14 Valley restaurant. Hunter purchased and consumed a meal consisting of a steak
15 burrito with white rice, pinto beans, cheese, sour cream and hot sauce. On August
16 19, 2015, Hunter again ate lunch at Chipotle's Simi Valley restaurant and purchased
17 a meal consisting of a steak and sofritas burrito with sour cream, white rice, pinto
18 beans and hot sauce. Later that day, Hunter began to experience severe abdominal
19 cramping, diarrhea, extreme vomiting, fever, stomach pain and "one of the longest
20 and most painful nights of my life." Hunter experienced these gastrointestinal
21 symptoms over a two day period.

22 **Karl Kniseley, IV's Norovirus Infection**

23 25. At all relevant times herein alleged, Karl Kniseley, IV was 16 years old
24 and a junior at Grace Brethren High School in Simi Valley, California. Karl is a
25 member of Grace Brethren's High School varsity football team and frequently eats
26 at Chipotle's Simi Valley restaurant. On August 18, 2015, Karl and several fellow
27 classmates from Grace Brethren High School purchased lunch at Chipotle's Simi
28 Valley restaurant. Karl purchased and consumed a meal consisting of a chicken

1 burrito, but also ate some of the food purchased by his friends as well. Within hours
2 of consuming is meal, Karl had severe abdominal pain, violent vomiting, diarrhea,
3 headache, chills and stomach cramps. These gastrointestinal symptoms continued
4 over a two day period, during which time Karl's body weight dropped 13 lbs. in 48
5 hours. Karl's father, Karl Kniseley, III, was forced to take off two days of work to
6 care for his son during this period and lost wages for those days.

7 **Mia & Bryce Phillip's Norovirus Infections**

8 26. At all relevant times herein alleged, Mia Phillips was a parent of
9 Plaintiff, Bryce Phillips, an eighth grade student at Grace Brethren Middle School in
10 Simi Valley, California. Mia is also a coach for Grace Brethren's Cheerleaders and
11 frequently eats at Chipotle's Simi Valley restaurant. On August 18, 2015, Mia and
12 her son, Bryce, and other classmates from Grace Brethren High School purchased
13 lunch at Chipotle's Simi Valley restaurant. Mia and Bryce purchased and consumed
14 a meal consisting of two steak bowls, a quesadilla, three tacos and a Coke. Later
15 that same day, Mia and Bryce both experienced extreme vomiting, diarrhea, painful
16 stomach cramps and gas. Both Mia and Bryce were sick with gastrointestinal illness
17 for two days. Mia lost income because of her sickness over this two day period.

18 **Sisto Zele's Norovirus Infection**

19 27. At all times relevant herein, Sisto Zele was 17 years old and a senior at
20 Grace Brethren High School in Simi Valley, California. Sisto is a member of Grace
21 Brethren's High School varsity football team and frequently eats at Chipotle's Simi
22 Valley restaurant. On August 18, 2015, Sisto and several fellow classmates from
23 Grace Brethren High School purchased lunch at Chipotle's Simi Valley restaurant.
24 Sisto purchased and consumed a meal consisting of a chicken burrito. On August
25 19, 2015 Sisto experienced vomiting, diarrhea, stomach pain, headache and chills.
26 Sisto's gastrointestinal illness lasted two days.

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1 **Louie Zele's Norovirus Infection**

2 28. At all times relevant herein, Louie Zele was 16 years old and a junior at
3 Grace Brethren High School in Simi Valley, California. Louie is a member of
4 Grace Brethren's High School varsity football team and frequently eats at Chipotle's
5 Simi Valley restaurant. On August 18, 2015, Louie and several fellow classmates
6 from Grace Brethren High School purchased lunch at Chipotle's Simi Valley
7 restaurant. Louie purchased and consumed a meal consisting of a steak burrito. On
8 August 19, 2015 Louie experienced vomiting, diarrhea, stomach pain, headache and
9 chills. Louie's gastrointestinal illness lasted two days.

10 **Michael Zele's Norovirus Infection**

11 29. At all times relevant herein, Michael Zele was 13 years old and in the
12 7th grade at Grace Brethren Middle School in Simi Valley, California. Michael is a
13 member of Grace Brethren's Pop Warner football team and frequently eats at
14 Chipotle's Simi Valley restaurant. On August 18, 2015, Michael and his brothers
15 from Grace Brethren High School purchased lunch at Chipotle's Simi Valley
16 restaurant. Michael purchased and consumed a meal consisting of a chicken burrito.
17 On August 19, 2015 Michael experienced vomiting, diarrhea, stomach pain,
18 headache and chills. Michael's gastrointestinal illness lasted two days.

19 **CLASS ALLEGATIONS**

20 30. This action can properly be maintained as a class action pursuant to
21 Federal Rules of Civil Procedure Rule 23. The Class is sufficiently numerous, since
22 it is estimated to include between 234 and as many as 3,000 customers who ate
23 adulterated food over a two day period at Chipotle's Simi Valley restaurant. Joinder
24 of these persons in one action is impractical, and the disposition of their claims in a
25 class action will provide substantial benefits to the parties and the Court.

26 31. **Class Definition:** Without prejudice to later revisions, the Class which
27 Plaintiffs seek to represent is composed of all persons in California who purchased
28 food and drink from Chipotle Mexican Grill, located at 1555 Simi Town Center

1 Way, Simi Valley between August 18 and 20, 2015, who suffered a gastrointestinal
2 illness.

3 32. Excluded from this class are Defendant, its employees, officers,
4 directors and agents, representatives, their family members, and the members of this
5 Court and its staff.

6 33. Throughout discovery of this litigation, Plaintiffs may find it
7 appropriate and/or necessary to amend the definition of the Class. Plaintiffs reserve
8 the right to amend the Class definition if discovery and further investigation reveal
9 that the class should be expanded or otherwise modified.

10 34. **Ascertainable Class:** While Plaintiffs do not know the exact number
11 and identity of all Class Members, Plaintiffs are informed and believe that VCEHD
12 has compiled a matrix entitled, "Chipotle FA0019771 Foodborne Illness Complaints
13 Combined (EHD and Chipotle Guest List)", which identifies 234 customers who
14 complained of gastrointestinal illness after consuming food and drink purchased
15 between August 18 and 19, 2015 at Chipotle's Simi Valley restaurant.
16 Additionally, Plaintiffs are informed and believe that Chipotle's "guest list" (e.g.
17 credit card receipts) will identify a significant number of additional customers who
18 purchased food from this restaurant during this two-day period. According to the
19 investigation performed by VCEHD, a total of approximately 1,500 entrees were
20 sold each day for this two-day period (e.g. total 3,000 meals) at Chipotle's Simi
21 Valley restaurant. Thus, the precise number of Class Members can easily be
22 ascertained through discovery.

23 35. **Common Questions of Law and Fact Predominate:** There is a well-
24 defined community of interest among the Class. The questions of law and fact
25 common to the Class predominate over questions that may affect individual Class
26 Members. These questions of law and fact include, but are not limited to, the
27 following:

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- 1 a. Whether Defendant exercised reasonable care in its food handling and
- 2 safety practices at its Simi Valley restaurant;
- 3 b. Whether Defendant exercised reasonable care in training its employees
- 4 of the Simi Valley Chipotle restaurant in food safety practices;
- 5 c. Whether Defendant exercised reasonable care in supervising its
- 6 employees of its Simi Valley Chipotle restaurant in food safety
- 7 practices;
- 8 d. Whether Defendant acted negligently;
- 9 e. Whether Defendant breached the implied warranty that its food and
- 10 drink were safe for human consumption;
- 11 f. Whether Defendant is strictly liable to the Class Members for their
- 12 personal injuries;
- 13 g. Whether Defendant violated California's Sherman Food, Drug and
- 14 Cosmetic Laws;
- 15 h. Whether Defendant violated California Health & Safety codes;
- 16 i. Whether Plaintiffs and proposed Class Members have been injured and
- 17 the proper measure of damages;
- 18 j. Whether Plaintiffs and proposed Class Members are entitled to an
- 19 award of punitive damages, attorney's fees and costs against Defendant;
- 20 k. Whether Plaintiffs and proposed Class Members are entitled to
- 21 injunctive relief against Defendant.

22 36. **Numerosity:** The Class is so numerous that the individual joinder of
23 all members of the Class is impractical under the circumstances of this case. While
24 the exact number of members of the Class is currently unknown to Plaintiffs at this
25 time, Plaintiffs are informed and believe the Class consists of at least 234 members
26 and possibly as many as 3,000 members based upon the Investigation performed by
27 VCEHD. Individual joinder of members of the Class is also impractical because the
28 individual members are dispersed throughout California.

1 **37. Typicality:** Plaintiffs' claims are typical of the claims of the members
2 of the proposed class. Plaintiffs and all Class Members have been injured by the
3 same wrongful conduct by Defendant. Plaintiffs and all Class Members consumed
4 food and drink adulterated with Norovirus at the same Chipotle restaurant located in
5 Simi Valley, California over a two day time period. Plaintiffs and all Class
6 Members suffered the same injury, namely gastrointestinal illness from Norovirus.
7 Seventeen of Defendant's employees who worked at Chipotle's Simi Valley
8 restaurant during this two day period also suffered the same gastrointestinal illness,
9 nine (9) of which were confirmed Norovirus cases by the Ventura County Public
10 Health Division based upon laboratory analysis of their stool samples. Several of the
11 customers who complained of gastrointestinal illness also tested positive for
12 Norovirus based upon lab analysis of stool or blood samples. Both the injury and
13 cause of injury were identical for all of the Plaintiffs and Class Members.

14 Accordingly, Plaintiffs' claims arise from the same Norovirus outbreak that gives
15 rise to the claims of all Class Members and are based upon the same legal theories.

16 **38. Adequacy of Representation:** Plaintiffs will fairly and adequately
17 represent and protect the interests of the Class in that they have no disabling
18 conflicts of interest that would be antagonistic to those of the other members of the
19 Class. Plaintiffs seek no relief that is antagonistic or adverse to the members of the
20 Class and the infringement of the rights and the damages they have suffered are
21 typical of all other Class Members. Plaintiffs have retained attorneys experienced in
22 consumer class actions and complex litigation as counsel.

23 **39. Superiority:** The disposition of Plaintiffs' and proposed Class
24 Members' claims in a class action will provide substantial benefits to both the parties
25 and the Court. The nature of this action and the nature of laws available to Plaintiffs
26 and the Class make the use of the class action procedure a particularly efficient and
27 appropriate process to afford relief to Plaintiffs and the Class Members for the
28 wrongs alleged herein:

- 1 a. The individual amounts of damages involved, while not insubstantial,
2 are such that individual actions or other individual remedies are
3 impractical and litigating individual actions would be too costly;
- 4 b. If each Class Member was required to file an individual lawsuit, the
5 Defendant would necessarily gain an unconscionable advantage since
6 it would be able to exploit and overwhelm the limited resources of
7 each individual Class Member with vastly superior financial and legal
8 resources;
- 9 c. The costs of individual suits could unreasonably consume the amounts
10 that would be recovered;
- 11 d. Given the size of the individual proposed Class Members' claims and
12 the expense of litigating those claims, few, if any, proposed Class
13 Members could afford or would seek legal redress individually for the
14 wrongs Defendant committed against them and absent Class Members
15 have no substantial interest in individually controlling the prosecution
16 of individual actions.
- 17 e. This action will promote an orderly and expeditious administration and
18 adjudication of the proposed class claims, economies of time, effort,
19 and resources will be fostered and uniformity of decisions will be
20 ensured;
- 21 f. Without a class action, proposed Class Members will continue to suffer
22 damages, and Defendant's violations of law will proceed without
23 remedy while Defendant continues to reap and retain the substantial
24 proceeds of its wrongful conduct;
- 25 g. Plaintiffs know of no difficulty that will be encountered in the
26 management of this litigation that would preclude its maintenance as a
27 class action;

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1 h. Proof of a common factual pattern which Plaintiffs' experienced is
2 representative of that experienced by the Class and will establish the
3 right of each member of the Class to recover on the causes of action
4 alleged herein; and

5 i. Individual actions would create a risk of inconsistent results and would
6 be unnecessary and duplicative of this litigation.

7 40. Plaintiffs and Class Members have all similarly suffered the same
8 injury and damages as a result of Defendant's unlawful and wrongful conduct. This
9 action will provide substantial benefits to Plaintiffs, the Class and the public.

10 **FIRST CAUSE OF ACTION**

11 **STRICT LIABILITY**

12 **(Violation of California's Sherman Food, Drug and Cosmetic Law -**
13 **California Health & Safety Code § 109875, et seq.)**

14 41. California's Sherman Food, Drug and Cosmetic Law governs the
15 "manufacture, production, processing, and packaging" of any food, pursuant to
16 Health & Safety Code § 110030.

17 42. Pursuant to Health & Safety Code §110545, "Any food is adulterated if
18 it bears or contains any poisonous or deleterious substance that may render it
19 injurious to health of man or any other animal that may consume it."

20 43. Pursuant to Health & Safety Code §110560, "Any food is adulterated if
21 it consists in whole or in part of any diseased, contaminated, filthy, putrid, or
22 decomposed substance, or if it is otherwise unfit for food."

23 44. Pursuant to Health & Safety Code §110565, "Any food is adulterated if
24 it has been produced, prepared, packed, or held under unsanitary conditions whereby
25 it may have become contaminated with filth, or whereby it may have been rendered
26 unwholesome, diseased, or injurious to health."

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1 45. Pursuant to Health & Safety Code §110575, "Any food is adulterated if
2 its container is composed, in whole or in part, of any poisonous or deleterious
3 substance that may render the contents injurious to health."

4 46. Pursuant to Health & Safety Code §110620, "It is unlawful for any
5 person to manufacture, sell, deliver, hold or offer for sale any food that is
6 adulterated."

7 47. Defendant is in the business of manufacturing, processing, preparing,
8 selling and offering to sell food at its restaurants.

9 48. Defendant manufactured, produced, prepared, packed, held and sold
10 food contaminated with the Norovirus at its Simi Valley restaurant between August
11 18 – 19, 2015, which rendered the food adulterated, unwholesome, diseased,
12 injurious to health and unfit for human consumption.

13 49. It was reasonably foreseeable to Defendant that the contaminated food,
14 when put to its reasonably foreseeable use (e.g. human consumption) would expose
15 Plaintiffs and Class Members to sickness and painful injury.

16 50. Defendant prepared, distributed and sold food that was contaminated
17 with Norovirus, which rendered the food adulterated, unwholesome and injurious to
18 health pursuant to Health & Safety Code §§110545, 110560, 110565, 110575, all in
19 violation of California's Sherman Food, Drug and Cosmetic Law, Health & Safety
20 Code §110620.

21 51. Plaintiffs and the members of the proposed Class have been injured as a
22 direct and proximate cause of their consumption of this adulterated food and have
23 suffered general and special damages, which include but are not specifically limited
24 to, pain and suffering, loss of enjoyment of life, medical expenses, wage and
25 economic loss, emotional distress, pharmaceutical expenses and other damages in an
26 amount to be proven at the time of trial.

27 52. Defendant's conduct in allowing its kitchen manager "Ben S." to
28 continue working between August 18 – 19, 2015 preparing food while sick with

1 gastrointestinal symptoms in violation of Chipotle's corporate policy and food and
2 safety regulations, and by failing to notify VCEHD and Ventura County Public
3 Health Division immediately upon learning of a foodborne illness outbreak, thereby
4 causing additional persons to become sick, was despicable conduct which was
5 carried on by Chipotle with a willful and conscious disregard of the rights and safety
6 of Plaintiffs and Class Members, and subjected them to cruel and unjust hardship in
7 conscious disregard of their rights. As such, Defendant is guilty of oppression,
8 fraud and/or malice and Plaintiffs request an assessment of punitive damages against
9 Defendant in an amount appropriate to punish Chipotle's wrongdoing and deter
10 future misconduct by Defendant and other potential wrongdoers.

11 **SECOND CAUSE OF ACTION**

12 **BREACH OF IMPLIED WARRANTY**

13 53. Plaintiffs incorporate by reference each of the preceding paragraphs as
14 though fully set forth herein.

15 54. Defendant impliedly warranted that the food products that the
16 Plaintiffs and members of the proposed Class consumed were of merchantable
17 quality and were safe for human consumption. The Plaintiffs and Class Members
18 purchased and consumed adulterated food prepared and sold by Defendant at its
19 Simi Valley restaurant between August 18 – 19, 2015.

20 55. Plaintiffs and the members of the proposed Class reasonably relied
21 upon the skill and judgment of Defendant as to whether the food products were of
22 merchantable quality and fit for human consumption.

23 56. The Defendant breached these implied warranties in that the
24 Defendant's food products were adulterated with the Norovirus.

25 57. As a direct and proximate result of the breach of these implied
26 warranties, Plaintiffs and Class Members have suffered and may continue to suffer
27 injury, harm, special damages and economic loss.

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THIRD CAUSE OF ACTION

NEGLIGENCE

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58. Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

59. Defendant owed a duty to Plaintiffs and members of the proposed Class to use reasonable care in the manufacture, distribution, and sale of its food products, the breach of which duty would have prevented or eliminated the risk that the Defendant's food products would become contaminated with Norovirus. Defendant breached this duty.

60. Defendant owed a further duty to comply with all statutes, laws, regulations or food safety codes pertaining to the manufacture, distribution, storage, preparation and sale of its food product, but failed to do so, and was therefore negligent. The Plaintiffs and members of the proposed Class are among the class of persons designed to be protected by these statutes, laws, regulations, and safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but it failed to do so, and was therefore negligent.

61. Defendant had a duty to prevent its employees who were sick, ill and symptomatic of gastrointestinal illness from working at its Simi Valley restaurant and thereby adulterating its food products sold to Plaintiffs and members of the proposed Class. Defendant breached this duty and therefore was negligent.

62. As a direct and proximate result of the Defendant's breaches and negligence, Plaintiffs and members of the proposed Class sustained injuries and damages in an amount to be proven at the time of trial.

63. Defendant's conduct in allowing its kitchen manager "Ben S." to continue working between August 18 – 19, 2015 preparing food while sick with gastrointestinal symptoms in violation of Chipotle's corporate policy and food and safety regulations, and by failing to notify VCEHD and Ventura County Public Health Division immediately upon learning of a foodborne illness outbreak, thereby

1 causing additional persons to become sick, was despicable conduct which was
2 carried on by Chipotle with a willful and conscious disregard of the rights and safety
3 of Plaintiffs and Class Members, and subjected them to cruel and unjust hardship in
4 conscious disregard of their rights. As such, Defendant is guilty of oppression,
5 fraud and/or malice and Plaintiffs request an assessment of punitive damages against
6 Defendant in an amount appropriate to punish Chipotle's wrongdoing and deter
7 future misconduct by Defendant and other potential wrongdoers.

8 **FOURTH CAUSE OF ACTION**

9 **NEGLIGENCE PER SE**

10 64. Plaintiffs incorporate by reference each and every preceding paragraph
11 as if fully set forth herein.

12 65. Defendant had a duty to comply with all applicable state laws and
13 regulations to ensure the purity and safety of its food products, including the
14 requirements of California's Sherman Food, Drug and Cosmetic Law (Health &
15 Safety Code §109875, *et seq.*)

16 66. Defendant failed to comply with the provisions of the food safety
17 statutes referenced above by selling adulterated food to Plaintiffs and members of
18 the proposed Class, and, as a result, was negligent *per se* in its manufacture,
19 distribution, and sale of food adulterated with Norovirus.

20 67. As a direct and proximate result of the conduct of Defendant that was
21 negligent *per se*, Plaintiffs and members of the proposed Class sustained damages in
22 an amount to be determined at trial.

23 **FIFTH CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

25 **(Business & Professions Code §17200, *et seq.*)**

26 68. Plaintiffs incorporate by reference each and every preceding paragraph
27 as if fully set forth herein.

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1 69. The acts, omissions, and practices of Defendant as alleged herein
2 constituted, and continue to constitute, unlawful and unfair business practices within
3 the meaning of Business & Professions Code §17200, *et seq.* Plaintiffs have
4 standing to bring this action under Business & Professions Code §17200, *et seq.*,
5 because they have suffered injury in fact and have lost money because of the
6 Defendant's conduct.

7 70. Defendant has engaged in "unlawful" business acts and practices by its
8 violation of the statutes and regulations referenced above, including, but not limited
9 to, Health & Safety Code §109875, *et seq.*

10 71. Defendant has also engaged in "unfair" business acts and practices in
11 that the harm caused by Defendant's conduct outweighs the utility of such conduct
12 and the conduct offends public policy, is immoral, unscrupulous, unethical, deceitful
13 and offensive, caused substantial injury to Plaintiffs and members of the proposed
14 Class, and provides Defendant with an unfair competitive advantage over those
15 companies that abide by the law.

16 72. As a result of the conduct described above, Defendant has been and
17 will be unjustly enriched at the expense of Plaintiffs and the Class.

18 73. The aforementioned unlawful or unfair business acts or practices
19 conducted by Defendant has been committed in the past, and continues to this day.
20 Defendant has failed to acknowledge the wrongful nature of its actions. Defendant
21 has not provided full restitution to Plaintiffs or members of the Class or disgorged
22 all of its ill-gotten money either acquired or retained by Defendant as a result
23 thereof, thereby depriving Plaintiffs and members of the proposed Class the money
24 they paid to purchase adulterated food at Defendant's Simi Valley restaurant
25 between August 18 – 19, 2015.

26 74. Pursuant to Business & Professions Code §17203, Plaintiffs and
27 members of the proposed Class seek an order of this Court requiring Defendant to
28 disgorge all ill-gotten gains and awarding Plaintiffs and the Class full restitution of

1 all monies wrongfully acquired by Defendant by means of such "unlawful" and
2 "unfair" conduct, plus interest and attorney's fees pursuant to, inter alia, California
3 Code of Civil Procedure §1021.5, so as to restore any and all monies to Plaintiffs
4 and the Class and the general public, which were acquired and obtained by means of
5 such "unlawful" and "unfair" conduct.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
8 situated, requests the following relief:

9 A. An order certifying this action as a class action under F.R.C.P. 23,
10 defining the class as requested herein, appointing the undersigned as Class Counsel,
11 and finding that Plaintiffs are proper representatives of the Class;

12 B. Restitution of all monies Defendant received from Plaintiffs and Class
13 Members, pursuant to Business & Professions Code §17200, *et seq.*;

14 C. Damages to be determined at trial including actual, compensatory, and
15 consequential damages incurred by Plaintiffs and Class Members;

16 D. Punitive damages;

17 E. An award of reasonable attorney's fees and costs; and

18 F. Such other and further relief as the Court may deem proper.

19 DATED: January 19, 2016

ROBERTSON & ASSOCIATES, LLP

20 /s/ Alexander Robertson, IV

21 By: _____

22 ALEXANDER ROBERTSON, IV
23 Attorneys for Plaintiffs and the Proposed
24 Class