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17 Attorneys for Plaintiff
 18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT
 20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,
 22 Plaintiff,
 23 v.
 24 CHIPOTLE MEXICAN GRILL, INC.,
 25 Defendant.

Case No. 2:20-cr-00188-TJH
DEFERRED PROSECUTION AGREEMENT
FOR DEFENDANT CHIPOTLE MEXICAN
GRILL, INC.

1 Time Periods Pursuant to Speedy Trial Act, in the form attached to
2 this agreement as Exhibit D or a substantially similar form.

3 d) Comply with all terms in this agreement and the
4 Compliance Program attached hereto as Exhibit C, which is
5 incorporated herein by reference.

6 e) Not contest any facts or information agreed to in
7 this agreement and the Statement of Facts attached hereto as
8 Exhibit B.

9 f) Appear for all court appearances, obey all conditions
10 of any bond, and obey any other ongoing court order in this matter.

11 g) Not commit any federal, state, or local crime.

12 h) Be truthful at all times with the USAO, DOJ-CPB, the
13 United States Food and Drug Administration ("FDA"), and the Court.

14 THE GOVERNMENT'S OBLIGATIONS

15 3. The Government agrees to:

16 a) Not contest facts agreed to in this agreement and the
17 Statement of Facts attached hereto as Exhibit B.

18 b) Sign, file, and enter a Stipulation Regarding Request
19 for (1) Continuance of Trial Date, and (2) Findings of Excludable
20 Time Periods Pursuant to Speedy Trial Act, in the form attached to
21 this agreement as Exhibit D or a substantially similar form.

22 c) If defendant is in full compliance with all of its
23 obligations under this agreement at the conclusion of the three-year
24 deferred prosecution term, within 15 calendar days of the conclusion
25 of the three-year term, move to dismiss the two-count information.

26 d) Except for civil and criminal tax violations
27 (including conspiracy to commit such violations chargeable under 18
28 U.S.C. § 371), not further prosecute defendant for criminal and/or

1 civil violations arising out of defendant's conduct described in the
2 attached statement of facts. This provision is binding upon
3 Chipotle, the USAO, DOJ-CPB, and the United States Attorney's Office
4 for each of the other 93 judicial districts of the United States.
5 Chipotle understands that this Agreement does not bind: (i) any
6 state or local prosecuting authorities; (ii) the Tax Division of the
7 U.S. Department of Justice; and (iii) the Internal Revenue Service
8 of the U.S. Department of the Treasury. Defendant understands that
9 the USAO, DOJ-CPB, and any other prosecuting authority are free to
10 criminally prosecute defendant for any other unlawful past conduct
11 or any unlawful conduct that occurs after the date of this
12 agreement.

13 TERM OF AGREEMENT

14 4. This agreement is effective upon signature and execution
15 by defendant's authorized representative, defendant's counsel, and
16 Government counsel, and will remain in effect for a period of three
17 years from the date this agreement is filed in court (the "three-
18 year term").

19 5. Defendant and the Government understand that the Agreement
20 to defer prosecution of Chipotle must be approved as to waiver of
21 the requirements of the Speedy Trial Act by the Court, in accordance
22 with 18 U.S.C. § 3161(h)(2). Should the Court decline to approve
23 the Agreement to defer prosecution for any reason: (a) both the
24 Government and Chipotle are released from any obligation imposed
25 upon them by the Agreement; and (b) the Agreement shall be null and
26 void, except for the parties' waiver of the statute of limitations.
27
28

1 Such legal document shall designate a company representative who is
2 authorized to take the actions specified in this agreement, and
3 shall also state that all legal formalities for such authorizations
4 have been observed.

5 ORGANIZATIONAL CHANGES AND APPLICABILITY

6 8. This agreement shall bind defendant, its successor
7 entities (if any), parent companies, and any other person or entity
8 that assumes the liabilities contained herein ("successors-in-
9 interest"). Defendant, or its successors-in-interest, if
10 applicable, shall provide the Government and the Court with
11 immediate notice of any name change, business reorganization, sale
12 or purchase of assets, divestiture of assets, or similar action
13 impacting their ability to pay the fine or affecting this agreement.
14 No change in name, change in corporate or individual control,
15 business reorganization, change in ownership, merger, change of
16 legal status, sale or purchase of assets, or similar action shall
17 alter defendant's responsibilities under this agreement. Defendant
18 shall not engage in any action to seek to avoid the obligations and
19 conditions set forth in this agreement.

20 NATURE OF THE OFFENSE

21 9. Defendant understands that for defendant to be guilty of
22 the crimes charged in the information, that is, adulterating food
23 and causing food to become adulterated while held for sale after
24 shipment of one or more of its components in interstate commerce in
25 violation of the FDCA, 21 U.S.C. §§ 331(k) and 333(a)(1), the
26 following must be true: defendant committed an act with respect to a
27 food, while the food was held for sale after shipment in interstate
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1 commerce that resulted in such food being adulterated under 21
2 U.S.C. § 342(a)(4).

3 PENALTIES

4 10. Defendant understands that the statutory maximum sentence
5 that the Court can impose for each misdemeanor violation of 21
6 U.S.C. §§ 331(k) and 333(a)(1), is: five years' probation; a fine of
7 \$200,000 or twice the gross gain or gross loss resulting from the
8 offense, whichever is greatest; and a mandatory special assessment
9 of \$125. Therefore, defendant understands that the total statutory
10 maximum sentence that the Court can impose in this matter is: five
11 years' probation; a fine of \$400,000 or twice the gross gain or
12 gross loss resulting from the offenses, whichever is greatest; and a
13 mandatory special assessment of \$250. The parties stipulate and
14 agree that a fine of \$25,000,000 is appropriate and is no more than
15 twice the gross gain or gross loss resulting from the offenses.

16 SUSPENSION, REVOCATION, AND DEBARMENT

17 11. Defendant understands that if defendant holds any
18 regulatory licenses or permits, this agreement may result in the
19 suspension or revocation of those licenses and/or permits. The
20 Government makes no representation or promise concerning suspension
21 or debarment of defendant from contracting with the United States or
22 with any office, agency, or department thereof. Suspension and
23 debarment of organizations is a discretionary administrative action
24 solely within the authority of those federal contracting agencies.
25 Defendant understands that unanticipated collateral consequences
26 such as this will not serve as grounds to withdraw from this
27 agreement.

FACTUAL BASIS

1
2 12. Defendant and the Government agree to the Statement of
3 Facts attached hereto as Exhibit B and incorporated herein by this
4 reference, and agree that the Statement of Facts is sufficient to
5 support misdemeanor convictions for the charges described in this
6 agreement. The attached Statement of Facts is not meant to be a
7 complete recitation of all facts relevant to the underlying criminal
8 conduct or all facts known to the parties that relate to that
9 conduct.

10 WAIVER OF STATUTE OF LIMITATIONS

11 13. Having been fully advised by defendant's attorney
12 regarding application of the statute of limitations to the two
13 norovirus offenses to which this agreement applies, along with the
14 Boston, Massachusetts norovirus offense that occurred on or about
15 December 2015, the Sterling, Virginia norovirus offense that
16 occurred on or about July 2017, and the Powell, Ohio *Clostridium*
17 *perfringens* offense that occurred on or about July 2018, defendant
18 hereby knowingly, voluntarily, and intelligently waives,
19 relinquishes, and gives up: (a) any right that defendant might have
20 not to be prosecuted for these offenses because of the expiration of
21 the statute of limitations for the offenses prior to the filing of
22 the information(s) alleging the offenses; and (b) any defense,
23 claim, or argument defendant could raise or assert that prosecution
24 of the offenses is barred by the expiration of the applicable
25 statute of limitations, pre-indictment delay, or any speedy trial
26 violation.

BREACH OF AGREEMENT

1
2 14. Defendant agrees that if any Chipotle officer or employee
3 at or senior to the rank Field Leader (or functional equivalent),¹
4 at any time after the signature of this agreement and execution of
5 all required certifications by defendant, defendant's counsel, and
6 Government counsel, knowingly violates or fails to perform any of
7 defendant's obligations under this agreement ("a breach"), the
8 Government may declare this agreement breached. All of defendant's
9 obligations are material, a single breach of this agreement is
10 sufficient for the Government to declare a breach, and defendant
11 shall not be deemed to have cured a breach without the express
12 agreement of the Government in writing. If the Government declares
13 this agreement breached, and the Court finds such a breach to have
14 occurred, then the Government will be relieved of all its
15 obligations under this agreement.

16 15. Following the Court's finding of a knowing breach of this
17 agreement by defendant, should the Government choose to pursue any
18 charge or any criminal, civil, administrative, or regulatory action
19 that was either dismissed or not filed as a result of this
20 agreement, including, the Simi Valley, California norovirus offense
21 that occurred on or about August 2015, the Los Angeles, California
22 norovirus offense that occurred on or about December 2017, the
23 Boston, Massachusetts norovirus offense that occurred on or about
24 December 2015, the Sterling, Virginia norovirus offense that

25
26
27 ¹ For the first 180 days after this agreement is signed and executed,
28 the relevant rank is Team Director (or functional equivalent)
instead of Field Leader (or functional equivalent).

1 occurred on or about July 2017, and the Powell, Ohio *Clostridium*
2 *perfringens* offense that occurred on or about July 2018, then:

3 a) Defendant agrees that any applicable statute of
4 limitations is tolled between the date of defendant's signing of
5 this agreement and the filing commencing any such action.

6 b) Defendant waives and gives up all defenses based on
7 the statute of limitations, any claim of pre-indictment delay, or
8 any speedy trial claim with respect to any such action, except to
9 the extent that such defenses existed as of the date of defendant's
10 signing this agreement.

11 c) Defendant agrees that: (i) any statements made by
12 defendant, under oath, at any hearing (if such a hearing occurred
13 prior to the breach); (ii) the agreed to factual basis statement
14 attached to this agreement; and (iii) any evidence derived from such
15 statements, shall be admissible against defendant in any such action
16 against defendant, and defendant waives and gives up any claim under
17 the United States Constitution, any statute, Rule 410 of the Federal
18 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
19 Procedure, or any other federal rule, that the statements or any
20 evidence derived from the statements should be suppressed or are
21 inadmissible.

22 COURT AND PROBATION OFFICE NOT PARTIES

23 16. Defendant understands that the Court and the United States
24 Probation Office are not parties to this agreement.

NO ADDITIONAL AGREEMENTS

17. Defendant understands that, except as set forth herein, and in the parties' tolling agreement, there are no promises, understandings, or agreements between the Government and defendant or defendant's attorney, and that no additional promise, understanding, or agreement may be entered into unless in writing and signed by all parties or on the record in court.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NICOLA T. HANNA
United States Attorney

Neil Walker For

4/20/20

JOSEPH O. JOHNS
MARK A. WILLIAMS
Assistant United States Attorneys
SONIA W. NATH
Special Assistant United States
Attorney

Date

UNITED STATES DEPARTMENT OF JUSTICE
CONSUMER PROTECTION BRANCH

GUSTAV W. EYLER
Director

Daniel Zytznick

4/20/2020

DANIEL ZYTNICK
Trial Attorney

Date

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NAME: Roger Theodoridis

TITLE: CLO

Authorized Representative of
Defendant CHIPOTLE MEXICAN GRILL,
INC.

4/17/2020

Date



JACK P. DiCANIO
Skadden, Arps, Slate, Meagher
& Flom LLP
Attorney for Defendant
CHIPOTLE MEXICAN GRILL, INC.

4/17/2020

Date



DAVID SCHEPER
Schepers Kim & Harris LLP
Attorney for Defendant
CHIPOTLE MEXICAN GRILL, INC.

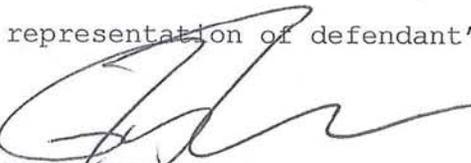
4/17/2020

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CERTIFICATION OF DEFENDANT

I have been authorized by defendant CHIPOTLE MEXICAN GRILL, INC. ("defendant") to enter into this agreement on behalf of defendant. I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with defendant's attorney. I understand the terms of this agreement, and I voluntarily agree to those terms on behalf of defendant. I have discussed the evidence with defendant's attorney, and defendant's attorney has advised me of defendant's rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me or to defendant other than those contained in this agreement. No one has threatened or forced me or defendant in any way to enter into this agreement. I am satisfied with the representation of defendant's attorney in this matter.



4/17/2020

NAME: Roger Theodoridis

Date

TITLE: CLO

Authorized Representative of
Defendant
CHIPOTLE MEXICAN GRILL, INC.

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CERTIFICATION OF COUNSEL

I am defendant CHIPOTLE MEXICAN GRILL, INC.'s attorney. I have carefully and thoroughly discussed every part of this agreement with the authorized representative of my client. Further, I have fully advised my client and its authorized representative of its rights, of possible motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support convictions to the charges specified in this agreement.

Jack DiCanio / by MES

JACK P. DICANIO
Skadden, Arps, Slate, Meagher
& Flom LLP
Attorney for Defendant
CHIPOTLE MEXICAN GRILL, INC.

4/17/2020

Date

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CERTIFICATION OF COUNSEL

I am defendant CHIPOTLE MEXICAN GRILL, INC.'s attorney. I have carefully and thoroughly discussed every part of this agreement with the authorized representative of my client. Further, I have fully advised my client and its authorized representative of its rights, of possible motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support convictions to the charges specified in this agreement.

David Schep

4/17/2020

DAVID SCHEPER
Scheper Kim & Harris LLP
Attorney for Defendant
CHIPOTLE MEXICAN GRILL, INC.

Date

EXHIBIT A

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC.

Defendant.

CR No. 20-

I N F O R M A T I O N

[21 U.S.C. §§ 331(k), 333(a)(1):
Adulterating and Causing the
Adulteration of Food While Held
for Sale After Shipment in
Interstate Commerce]

The United States Attorney charges:

COUNT ONE

[21 U.S.C. §§ 331(k), 333(a)(1)]

On or about August 18, 2015, through August 24, 2015, in Simi Valley, California, within the Central District of California, and elsewhere, defendant CHIPOTLE MEXICAN GRILL, INC. ("CHIPOTLE") did adulterate food, and cause food to become adulterated, within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 321(f), 342(a)(4), while such food was held for sale after shipment in interstate commerce. Specifically, defendant CHIPOTLE held food that was adulterated because it was prepared, packed, and held under insanitary conditions whereby it may have been contaminated with filth, and whereby it may have been rendered

1 injurious to health, while such food was held for sale after shipment
2 of one or more of its components in interstate commerce.

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COUNT TWO

[21 U.S.C. §§ 331(k), 333(a)(1)]

On or about December 13, 2017, through December 18, 2017, in Los Angeles County, within the Central District of California, and elsewhere, defendant CHIPOTLE did adulterate food, and cause food to become adulterated, within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 321(f), 342(a)(4), while such food was held for sale after shipment in interstate commerce. Specifically, defendant CHIPOTLE held food that was adulterated because it was prepared, packed, and held under insanitary conditions whereby it may have been contaminated with filth, and whereby it may have been rendered injurious to health, while such food was held for sale after shipment of one or more of its components in interstate commerce.

GUSTAV W. EYLER
Director
Consumer Protection Branch

NICOLA T. HANNA
United States Attorney

DANIEL ZYTNICK
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice

BRANDON D. FOX
Assistant United States Attorney
Chief, Criminal Division

JOSEPH O. JOHNS
Assistant United States Attorney
Chief, Environmental and Community
Safety Crimes Section

MARK A. WILLIAMS
Assistant United States Attorney
Deputy Chief, Environmental and
Community Safety Crimes Section

EXHIBIT B

Statement of Facts

The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (this "Agreement") between the United States Attorney's Office for the Central District of California and the United States Department of Justice's Consumer Protection Branch (collectively, "the Government") and Chipotle Mexican Grill, Inc. ("Chipotle"). Chipotle hereby agrees and stipulates that the following information is true and accurate. Chipotle admits, accepts, and acknowledges that it is responsible for the acts of its employees as set forth below. From in or about August 2015 to in or about July 2018, in the Central District of California and elsewhere, Chipotle violated 21 U.S.C. § 331(k) by doing and causing to be done acts that caused articles of food to become adulterated within the meaning of 21 U.S.C. § 342(a)(4), while such articles were held for sale after shipment of one or more of their components in interstate commerce. Should the Government pursue the prosecution that is deferred by this Agreement, Chipotle agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts.

I. BACKGROUND: RAPID GROWTH AND PROFITABILITY

1. Chipotle is a Delaware corporation based in Newport Beach, California, in the Central District of California. From 1993 through 2018, Chipotle was based in Colorado.

1 2. The first Chipotle opened its doors on July 13, 1993.¹
2 The second and third opened in 1995 and 1996.² Subsequent growth
3 was much faster, in large part due to McDonald's investment in
4 Chipotle in 1998. By the end of 2008, Chipotle owned over 800
5 restaurants.³ By September 30, 2015, Chipotle had 1,895
6 restaurants in the United States.⁴ That number includes 150 new
7 restaurants opened in the first nine months of 2015,⁵ an average of
8 almost four per week.

9 3. For the calendar years from 2011 to 2015, Chipotle's
10 revenue nearly doubled, from \$2.27 billion for 2011 to \$4.50 billion
11 for 2015. Net income more than doubled during the same time frame,
12 from \$214.95 million in 2011 to \$475.60 million in 2015.⁶

13 4. In 2014, a restaurant trade publication ranked Chipotle
14 15th in sales among other "fast-food" operations.⁷

15 5. Also in 2014, Forbes published an article praising
16 Chipotle as "the leader in the fast casual segment" and comparing
17 the company's "double digit revenue growth" to McDonald's and Burger
18 King's "2% and -4% annual growth."⁸ The Motley Fool published an
19 article in 2014, stating that the company has "already bested the
20

21 ¹ [https://money.cnn.com/2010/10/06/smallbusiness/chipotle_started.fortune/
index.htm](https://money.cnn.com/2010/10/06/smallbusiness/chipotle_started.fortune/index.htm)

22 ² [https://www.cnn.com/2017/11/29/how-steve-ells-built-chipotle-mexican-grill-
into-a-burrito-empire.html](https://www.cnn.com/2017/11/29/how-steve-ells-built-chipotle-mexican-grill-into-a-burrito-empire.html)

23 ³ <https://www.sec.gov/Archives/edgar/data/1058090/000119312509033199/d10k.htm>

24 ⁴ [https://www.sec.gov/Archives/edgar/data/1058090/000105809015000044/cm-g-
20150930x10q.htm](https://www.sec.gov/Archives/edgar/data/1058090/000105809015000044/cm-g-20150930x10q.htm)

25 ⁵ [https://www.sec.gov/Archives/edgar/data/1058090/000105809015000044/cm-g-
20150930x10q.htm](https://www.sec.gov/Archives/edgar/data/1058090/000105809015000044/cm-g-20150930x10q.htm)

26 ⁶ [https://www.sec.gov/Archives/edgar/data/1058090/000105809016000058/cm-g-
20151231x10k.htm](https://www.sec.gov/Archives/edgar/data/1058090/000105809016000058/cm-g-20151231x10k.htm)

27 ⁷ <https://www.qsrjournal.com/reports/qsr50-2014-top-50-chart>

28 ⁸ [https://www.forbes.com/sites/greatspeculations/2014/12/30/2014-year-in-review-
chipotle-mexican-grill/#647f564552f3](https://www.forbes.com/sites/greatspeculations/2014/12/30/2014-year-in-review-chipotle-mexican-grill/#647f564552f3)

1 competition" and has "all the right pieces in place for continued
2 growth."⁹

3 6. As of December 31, 2018, Chipotle owned 2,452 restaurants
4 in the United States bearing the Chipotle name and selling fast
5 casual Mexican food, and employed 73,000 employees, including about
6 5,100 salaried employees and about 67,900 hourly employees.

7 7. A typical Chipotle restaurant is staffed with a general
8 manager (sometimes called a "Restaurateur"), one to three hourly
9 service managers, one to three hourly kitchen managers and an
10 average of 22 full and part-time crew members.¹⁰ Chipotle
11 restaurants generally have two shifts per day. Employees are
12 cross-trained so that they can each work a variety of stations
13 within the restaurant with a focus on "on the job" training for the
14 various positions. Most of Chipotle's restaurants also employ an
15 apprentice manager.¹¹

16 8. According to Chipotle's earnings reports, labor costs
17 comprised 22.0 percent of yearly revenues for 2014. By 2017, labor
18 costs had risen to 26.9 percent of yearly revenues.¹²

19 9. Since going public in 2006, Chipotle has acknowledged in
20 its annual disclosures to the Securities and Exchange Commission
21 ("SEC") that foodborne illness outbreaks are a risk associated with
22 operating its restaurants. Chipotle's 2014 and 2015 annual reports
23

24 ⁹ [https://www.fool.com/investing/general/2014/10/17/why-chipotle-mexican-grill-
25 stock-looks-like-a-grea.aspx](https://www.fool.com/investing/general/2014/10/17/why-chipotle-mexican-grill-stock-looks-like-a-grea.aspx)

26 ¹⁰ [https://www.sec.gov/Archives/edgar/data/1058090/000105809019000007/cm-g-
27 20181231x10k.htm](https://www.sec.gov/Archives/edgar/data/1058090/000105809019000007/cm-g-20181231x10k.htm)

28 ¹¹ [https://www.sec.gov/Archives/edgar/data/1058090/000105809019000007/cm-g-
20181231x10k.htm](https://www.sec.gov/Archives/edgar/data/1058090/000105809019000007/cm-g-20181231x10k.htm)

¹² [https://table.skift.com/2018/02/14/the-trouble-with-chipotle-is-labor-and-food-
costs/](https://table.skift.com/2018/02/14/the-trouble-with-chipotle-is-labor-and-food-costs/)

1 state that it "may be at a higher risk for food-borne illness
2 outbreaks than some competitors due to our use of fresh produce and
3 meats rather than frozen, and our reliance on employees cooking with
4 traditional methods rather than automation."¹³

5 **II. FAST-CASUAL FOOD SERVICE, WITH KNOWN FOOD SAFETY RISKS**

6 10. Chipotle sought to revolutionize the food industry by
7 "demonstrat[ing] that food served fast doesn't have to be a 'fast-
8 food' experience," and the company looked "to fine-dining
9 restaurants for inspiration." Chipotle touted its use of "high-
10 quality raw ingredients, classic cooking methods and a distinctive
11 interior design," which it described as "features that are more
12 frequently found in the world of fine dining."¹⁴ Chipotle also
13 marketed itself using the term "food with integrity," a phrase that
14 the company uses to describe its dedication to, among other things,
15 naturally-raised meat, sustainably grown produce, and "great
16 preparation" by "skilled crews us[ing] classic cooking
17 techniques."¹⁵

18 11. Chipotle strives to use locally sourced ingredients
19 wherever possible in its restaurants; however, at least some of the
20 components of its food held for sale in its restaurants were
21 shipped in interstate commerce.

22 12. From approximately 2015 to 2018, Chipotle faced at least
23 five food safety incidents at various restaurants around the
24 country, which stemmed primarily from store-level employees' failure
25

26 ¹³ [https://www.sec.gov/Archives/edgar/data/1058090/000119312514035451/
27 d629534d10k.htm](https://www.sec.gov/Archives/edgar/data/1058090/000119312514035451/d629534d10k.htm)

¹⁴ [https://www.sec.gov/Archives/edgar/data/1058090/000104746906003640/a2168474z10-
28 k.htm](https://www.sec.gov/Archives/edgar/data/1058090/000104746906003640/a2168474z10-k.htm)

¹⁵ <https://www.chipotle.com/food-with-integrity>

1 to follow Chipotle's food safety policies and procedures, including
2 the policy requiring the exclusion of restaurant employees who were
3 sick or recently had been sick, as well as a failure by restaurant
4 employees to hold food at appropriate temperatures to prevent and
5 control for the growth of foodborne pathogens. These failures
6 contributed to norovirus outbreaks in late 2015 and 2017 at four
7 Chipotle restaurants as well as one outbreak of foodborne illness
8 related to *Clostridium perfringens* in July 2018. Collectively, more
9 than 1,100 people reported becoming ill in connection with these
10 incidents.

11 **III. FOODBORNE ILLNESSES**

12 13. Based on estimates from the United States Centers for
13 Disease Control and Prevention on the incidence of foodborne
14 disease, publicly available data on wages, peer-reviewed synthesis
15 of data on medical costs, and economic, medical, and epidemiological
16 literature, the Economic Research Service of the United States
17 Department of Agriculture has estimated that the costs of major
18 foodborne illnesses in the United States total over \$15.6 billion
19 annually,¹⁶ with \$2.2 billion attributable to norovirus outbreaks
20 and \$342 million attributable to *Clostridium perfringens*
21 outbreaks.¹⁷ Norovirus is the leading cause of illness and
22 outbreaks from contaminated food in the United States.¹⁸

26 ¹⁶ <https://www.foodsafetynews.com/2014/10/foodborne-illnesses-cost-usa-15-6-billion-annually/>

27 ¹⁷ <https://www.ers.usda.gov/data-products/cost-estimates-of-foodborne-illnesses/>

28 ¹⁸ <https://www.cdc.gov/norovirus/about/transmission.html>

1 **A. NOROVIRUS**

2 14. Norovirus is a "highly infective pathogen[] that can
3 easily be transmitted by food workers and cause severe illness."¹⁹
4 Norovirus outbreaks are commonly reported in healthcare facilities
5 (including hospitals and long-term care facilities), schools and
6 child care facilities and on cruise ships as well as in restaurants
7 and other catered events.²⁰ The CDC states that food handlers with
8 norovirus can easily cause an outbreak:

9 If you work with food when you have norovirus illness, you can
10 spread the virus to others. You can easily contaminate food
11 and drinks that you touch with bare hands. People who consume
12 the food or drinks can get norovirus and become sick. This can
13 cause an outbreak.

14 ...

15 Most of these outbreaks occur in the food service settings like
16 restaurants. Infected food workers are frequently the source
17 of the outbreaks, often by touching ready-to-eat foods, such as
18 raw fruits and vegetables, with their bare hands before serving
19 them.²¹

20 15. The Food and Drug Administration has recommended that, to
21 prevent the spread of norovirus at retail food establishments,
22 "[m]anagement should explain to food employees the importance of
23 reporting specific symptoms and any diagnoses or exposures to
24
25

26 ¹⁹ [www.fda.gov/food/guidanceregulation/retailfoodprotection/
industryandregulatoryassistanceandtrainingresources/ucm113827.htm](http://www.fda.gov/food/guidanceregulation/retailfoodprotection/industryandregulatoryassistanceandtrainingresources/ucm113827.htm)

27 ²⁰ <https://www.cdc.gov/norovirus/trends-outbreaks/outbreaks.html>

28 ²¹ www.cdc.gov/norovirus/food-handlers/work-with-food.html

1 foodborne illness," including vomiting, diarrhea, and any norovirus
2 diagnosis.²²

3 16. The most common symptoms of norovirus are: diarrhea,
4 vomiting, nausea, and stomach pain.²³ Norovirus also causes acute
5 gastroenteritis, which is an inflammation of the stomach or
6 intestines.²⁴

7 17. A person usually develops symptoms 12 to 48 hours after
8 being exposed to norovirus. People with norovirus illness can feel
9 extremely ill, and vomit or have diarrhea many times a day. This
10 can lead to dehydration, especially in young children, older adults,
11 and people with other illnesses. Most people with norovirus illness
12 get better within 1 to 3 days.²⁵

13 **B. CLOSTRIDIUM PERFRINGENS**

14 18. *Clostridium perfringens* (*C. perfringens*) is a spore-
15 forming gram-positive bacterium that is found in many environmental
16 sources as well as in the intestines of humans and animals. *C.*
17 *perfringens* is commonly found on raw meat and poultry. It prefers
18 to grow in conditions with very little or no oxygen, and, under
19 ideal conditions, can multiply very rapidly. Some strains of *C.*
20 *perfringens* produce a toxin in the intestine that causes illness.²⁶
21 According to the CDC, "it is one of the most common types of
22 foodborne illness in the United States. The CDC estimates it causes
23 nearly 1 million cases of foodborne illness each year."²⁷

24 _____
25 ²² [www.fda.gov/food/guidanceregulation/retailfoodprotection/
industryandregulatoryassistanceandtrainingresources/ucm113827.htm](http://www.fda.gov/food/guidanceregulation/retailfoodprotection/industryandregulatoryassistanceandtrainingresources/ucm113827.htm)

26 ²³ <https://www.cdc.gov/norovirus/about/symptoms.html>

27 ²⁴ <https://www.cdc.gov/norovirus/about/symptoms.html>

28 ²⁵ *Id.*

²⁶ <https://www.cdc.gov/foodsafety/diseases/clostridium-perfringens.html>

²⁷ *Id.*

1 19. Beef, poultry, gravies, and dried or pre-cooked foods
2 are common sources of *C. perfringens* infections. *C. perfringens*
3 infection often occurs when foods are prepared in large quantities
4 and kept warm for a long time before serving.²⁸

5 20. People infected with *C. perfringens* develop diarrhea and
6 abdominal cramps within 6 to 24 hours (typically 8 to 12 hours).
7 The illness usually begins suddenly and lasts for less than 24
8 hours. People infected with *C. perfringens* usually do not have
9 fever or vomiting. The illness is not passed from one person to
10 another.²⁹

11 21. Everyone is susceptible to food poisoning from *C.*
12 *perfringens*. The very young and elderly are most at risk of *C.*
13 *perfringens* infection and can experience more severe symptoms that
14 may last for 1 to 2 weeks. Complications, including dehydration,
15 may occur in severe cases.³⁰

16 **IV. CHIPOTLE'S APPROACH TO FOOD SAFETY**

17 22. As of 2015, Chipotle had five main corporate departments
18 responsible for food safety, all of which remain in place today:
19 Restaurant Operations; Safety Security & Risk ("SSR"); Supply
20 Chain; Training; and Food Safety & Quality Assurance ("FSQA").
21 Chipotle's employee handbook and training materials state that
22 ensuring food safety was a "top priority" of the company and was
23 part of every employee's job and responsibility.³¹

24 23. Although not required by the FDA for restaurants,
25 Chipotle took the initiative to adopt a Hazard Analysis and
26

27 ²⁸ *Id.*

²⁹ <https://www.cdc.gov/foodsafety/diseases/clostridium-perfringens.html>

28 ³⁰ *Id.*

³¹ (2014 Chipotle Employee Handbook, at 13-16.)

1 Critical Control Point ("HACCP") plan, which is a food safety
2 management system focused on preventing food safety problems by
3 identifying critical control points ("CCPs") in the restaurant.
4 According to the FDA, a CCP is defined as a "step at which control
5 can be applied and is essential to prevent or eliminate a food
6 safety hazard or reduce it to an acceptable level."³² Some examples
7 of CCPs identified by Chipotle include: carefully monitoring and
8 regulating hot and cold holding temperatures; wellness and personal
9 hygiene checks; walk-in and reach-in cooler temperatures; grill
10 temperatures; grilled meat temperatures; and the process of cooling
11 cooked foods.

12 24. Chipotle also retained an outside company, EcoLab, to
13 conduct audits of its restaurants at periodic intervals. Those
14 audits reviewed food temperature controls, sanitizer levels, and
15 water levels. However, the EcoLab audits did not look at
16 training records; it was Chipotle management's responsibility to
17 review and verify employee training.

18 25. SSR was one of Chipotle's headquarters-based units that
19 included a customer incident team, which was responsible for
20 tracking reports of both customer incidents (including illnesses)
21 and employee illnesses. After learning about illnesses, SSR would
22 sometimes contact individual Chipotle restaurants to determine if
23 there were any additional reports of customer or employee illness.
24 SSR was a first-responder team that sometimes learned of employee
25 illnesses from store management or after following up on reports of
26 consumer illnesses; these reports sometimes were viewed skeptically

27
28 ³² <https://www.fda.gov/food/hazard-analysis-critical-control-point-haccp/haccp-principles-application-guidelines#defs>

1 by the company. As one former SSR Customer Incident Analyst
2 stated, Chipotle "never honored a foodborne illness claim when
3 there was only one customer complaint of foodborne illness."

4 26. The Norwalk Prevention Protocols ("NPPs") are a
5 comprehensive set of protocols designed specifically for Chipotle
6 to help combat norovirus. The NPPs include the implementation of
7 employee symptom surveys to ensure the exclusion of sick employees,
8 sanitizing the restaurant using bleach solution, increased
9 handwashing protocols and restrictions on sharing employees and
10 food transfers. These protocols are put into place when reports of
11 illness occur in a restaurant or when a high risk of norovirus is
12 suspected within the community in which the restaurant is located.

13 27. In compliance with Chipotle's policies and procedures,
14 Chipotle restaurants did not implement the NPPs until after SSR was
15 notified of potential illnesses and SSR instructed the restaurant
16 to implement them. Once SSR was notified and began investigating
17 complaints of customer illnesses at the restaurants located in Simi
18 Valley, California; Boston, Massachusetts; Sterling, Virginia; Los
19 Angeles, California, and Powell, Ohio, it took action in
20 implementing the NPPs. As set out herein, store-level employees'
21 failure to follow Chipotle's food safety protocols, including the
22 sick exclusion policy, and the failure to timely notify SSR,
23 contributed to the size of foodborne illness outbreaks stemming
24 from those restaurants.

25 **V. CHIPOTLE RESTAURANTS FAILED TO FOLLOW THE COMPANY'S ESTABLISHED**
26 **PROTOCOLS TO PREVENT SICK EMPLOYEES FROM WORKING**

27 28. In 2008, more than 400 people were sickened by norovirus
28 at a Chipotle restaurant in Ohio. In response to that incident,

1 Chipotle worked to develop the company-wide NPPs, which are not
2 mandated by the FDA.

3 29. Minor changes to the NPPs were made between 2008 and
4 2017. The October 2014 version mandated that the NPPs must be
5 implemented "immediately" in any restaurant:

6 (1) When two or more unrelated customers report "getting sick
7 "within 12 to 48 hours after eating at Chipotle and the
8 customer's symptoms are vomiting or a combination of"
9 diarrhea, nausea, fever, or stomach cramps;

10 (2) "When a restaurant level employee becomes ill with
11 vomiting or a combination of" diarrhea, nausea, fever, or
12 stomach cramps; or

13 (3) "When a crew member or customer vomits in the restaurant."

14 When any of these three situations occurred, the manager in charge
15 was to "immediately call" a regional Field Leader and SSR. The NPPs
16 also stated that managers must "immediately call" the SSR and Field
17 Leader in the event of "multiple ill employees or multiple customer
18 complaints."

19 30. The October 2014 NPPs further required the manager to
20 "immediately complete [an] attached Employee Symptom Survey with
21 every employee, and continue to do so for five days." The NPPs
22 required mandatory exclusion for sick employees: "If any employee
23 answers 'Yes' to vomiting or a combination of the following:
24 diarrhea, nausea, fever, or stomach cramps, that employee must be
25 excluded from Chipotle, working or visiting, for 5 complete days
26 from the date that employee last had symptoms." The NPPs required
27 "any and all 'Yes' answers" to be reported to the Field Leader and
28 SSR. The October 2014 NPPs also required managers to watch for sick

1 employees: "Managers must be on the lookout for employees who are or
2 may be sick but have not reported being sick."

3 31. When implemented, the NPPs dictated an enhanced cleaning
4 protocol for the affected restaurant. The October 2014 NPPs
5 specified that the cleaning protocols must be "followed for 5 days."

6 32. Chipotle also had an employee illness policy, which
7 required employees suffering from a list of symptoms, including
8 vomiting, to "immediately report it to the manager in charge[.]"
9 The employee illness policy stated that, "[i]f you are ill and you
10 vomit, you must immediately report this to the manager in charge,
11 and you may be excluded from working at Chipotle for a period of
12 five days from the date you last became ill."

13 33. Since at least 2007, Chipotle has had a formal written
14 sick exclusion policy, requiring that any employee symptomatic with
15 vomiting be excluded from the restaurant. The Company's policy on
16 this issue was explained in more detail in a December 2013 internal
17 newsletter:

18 Any employee who is vomiting must be sent home
19 immediately, if they're in the restaurant. They
20 must also be off for at least 5 full days --
21 regardless of any doctors' notes or if they say
22 they feel better. No exemptions! Employees can
23 be contagious, even after their symptoms have
24 subsided. Maintaining the '5-Days Policy' is a
25 very important part not only of keeping our food
26 safe for our customers, but to prevent other
27 employees from becoming ill.

1 34. On July 1, 2015, before the norovirus incidents at issue
2 here, Chipotle adopted a paid sick leave policy, pursuant to which
3 employees would accrue three days, or 24 hours, per year of annual paid
4 sick leave. Less than a year later, on March 28, 2016, Chipotle
5 altered this policy to eliminate the accrual requirement so that
6 employees received 24 hours of paid sick leave on their first day of
7 employment.

8 35. Despite the requirement that store managers contact SSR in
9 certain situations, there were occasions when customer incident
10 analysts at SSR would not find out about restaurant employee
11 illnesses until the analysts contacted the restaurant because of a
12 customer illness report, which then led to delayed implementation of
13 the NPPs. For example, in May 2014, a consumer illness report
14 prompted an SSR customer incident analyst to contact a Chipotle
15 restaurant in El Segundo, California, whose kitchen manager informed
16 the customer incident analyst that an employee was "vomiting at work
17 and was sent home yesterday." The customer incident analyst
18 directed the restaurant to begin the NPPs. According to the
19 protocols, the restaurant should have contacted SSR and begun the
20 NPPs the previous day because of the employee vomiting at work. The
21 next month, an SSR customer incident analyst directed a Chipotle
22 restaurant in Maryland to begin the NPPs after learning that a
23 restaurant employee "vomited at the restaurant" five days earlier.
24 Thus, the restaurant had failed to follow company policy to timely
25 report the illness to SSR and to implement the NPPs despite an
26 employee vomiting in the restaurant. While the NPPs were ongoing,
27 the customer incident analyst directed the restaurant to continue
28 following the protocols for five more days after being informed that

1 a crew member was "vomiting this morning and worked today," which
2 also violated company policy. Similarly, in December 2014, after
3 receiving a consumer illness report regarding a Chipotle restaurant
4 in Boynton Beach, Florida, an SSR customer incident analyst learned
5 from a restaurant employee that "multiple crew members have been
6 sick and that a crew member vomited in the restaurant on" December
7 26, 2014. The customer incident analyst directed the restaurant to
8 immediately begin the NPPs, three days after the employee vomited in
9 the restaurant. The restaurant failed to follow company policy by
10 not timely notifying SSR about the employee vomiting in the
11 restaurant and immediately implementing the NPPs. These three
12 incidents in Chipotle restaurants across the country (California,
13 Maryland, and Florida) demonstrate that some store-level Chipotle
14 employees were not following the company's policies and illness
15 reporting requirements, which contributed to the norovirus outbreaks
16 at issue.

17 36. Similar failures and violations of the NPPs occurred in
18 2014 and 2015. In the three months from May to July of 2015, the
19 NPPs were implemented three times. Each of those implementations
20 involved a consumer reporting an illness, which prompted an SSR
21 customer incident analyst to contact a Chipotle restaurant only to
22 subsequently learn that an employee had returned to work the day
23 after vomiting. In each of those instances, SSR learned about the
24 employee illnesses only because of later consumer illness reports.

25 37. In August 2015, over the course of at least seven days,
26 approximately 234 consumers and employees of a Chipotle restaurant
27 in Simi Valley, California, in the Central District of California,
28 reported becoming ill. On August 19, 2015, an employee of that

1 restaurant was sent home because he vomited. Although Chipotle's
2 policies required the restaurant to report such illnesses to SSR and
3 implement the NPPs, the restaurant did not do so. Two days later,
4 following multiple consumer illness reports, a customer incident
5 analyst and a regional manager spoke with the restaurant's
6 apprentice manager and learned that another employee reported having
7 a contagious illness the previous day. The customer incident
8 analyst directed the restaurant to implement the NPPs. As part of
9 the NPPs, employees completed symptoms surveys, and at least four
10 employees reporting having symptoms potentially related to norovirus
11 earlier in the week. Some of the staff cleaning the restaurant as
12 part of the NPPs were also sick, with symptoms potentially related
13 to norovirus. Additionally, on or about September 7, 2015, after
14 implementation of the NPPs, a general manager came to work at the
15 Simi Valley store while sick. At least one Chipotle employee
16 notified Chipotle headquarters of this incident in writing, but
17 never received a response.

18 38. In December 2015, over the course of at least nine days,
19 approximately 141 people reported illness related to a norovirus
20 incident at a Chipotle restaurant in Boston, Massachusetts. This
21 outbreak is likely the result of an ill apprentice manager working
22 in the restaurant. On December 3, the apprentice manager informed a
23 regional Chipotle manager that he vomited in the restaurant.
24 Although this incident should have triggered the NPPs, no one
25 reported the illness to SSR or implemented the NPPs. Instead, the
26 regional manager instructed the apprentice manager to stay until
27 closing, a clear violation of Chipotle's food safety policies. The
28 apprentice manager did not work the following day, but returned on

1 December 5 and helped package a catering order for a Boston College
2 basketball team, whose members were among the consumers sickened by
3 the outbreak.

4 39. In July 2017, over the course of at least four days, at
5 least 135 people reported illness related to a norovirus incident at
6 a Chipotle restaurant in Sterling, Virginia. The restaurant's
7 general manager allowed the kitchen manager to work while sick,
8 aggravating the Sterling norovirus outbreak. The county health
9 department found in 2015 that "[e]mployees or applicants are not
10 aware of the reporting procedures concerning information about their
11 health and activities if they are suspected of causing, or being
12 exposed to a confirmed disease outbreak caused by Salmonella,
13 Shigella, E. coli O157:H7, Hepatitis A virus or norovirus." The
14 county health department found a similar violation in 2013:
15 "Employees or applicants are not aware of the reporting procedures
16 concerning information about their health and activities as they
17 relate to diseases that are transmissible through food, including
18 ... norovirus."³³

19 40. In December 2017, over the course of six days, at least
20 28 people, including at least 11 Chipotle employees, reported
21 illness related to a norovirus incident at the Chipotle restaurant
22 on West Pico Boulevard in Los Angeles, California, in the Central
23 District of California. The employees exhibited symptoms of
24 diarrhea, weakness, vomiting, and body aches.

25 41. The sick employees at the West Pico Boulevard Chipotle
26 restaurant reported serving as food handlers in the restaurant.

27 _____
28 ³³ [www.healthspace.com/Clients/VDH/Loudoun/Web.nsf/formFacility.xsp?
id=81436EC5EB1CD4_5C8825703E00417E86](http://www.healthspace.com/Clients/VDH/Loudoun/Web.nsf/formFacility.xsp?id=81436EC5EB1CD4_5C8825703E00417E86)

1 Several sick employees were sent home and told not to work;
2 however, at least one employee who was sick during the December
3 outbreak was not excluded for the appropriate number of days, in
4 violation of the NPPs. She was sent home from work on Tuesday,
5 December 12, 2017, returned to work on Thursday, December 14,
6 2017, and worked all day, before the end of the exclusion period
7 required by the NPPs. On Friday, December 15, 2017, she reported
8 for work and was again sent home for being sick.

9 **VI. A CHIPOTLE RESTAURANT FAILED TO HOLD FOOD AT APPROPRIATE TEMPERATURES**

10 42. In July 2018, over the course of at least eight days,
11 approximately 647 people who dined at a Chipotle restaurant in
12 Powell, Ohio reported illness related to *Clostridium perfringens*,
13 a pathogen that grows rapidly when food is not held at appropriate
14 temperatures. The local health department determined that the
15 restaurant had critical violations of the local food regulations,
16 including those specific to time and temperature controls for
17 lettuce and beans.

18 **VII. CHIPOTLE SIGNIFICANTLY ENHANCED ITS FOOD SAFETY POLICIES AND**
19 **PROCEDURES IN THE WAKE OF THE FOOD SAFETY INCIDENTS AT ISSUE HERE**

20 43. In the wake of the incidents discussed above, Chipotle
21 took numerous steps to improve its food safety policies and
22 procedures. As part of its continuous process of safety
23 improvements, Chipotle enhanced its paid sick leave policy to
24 automatically grant all employees 3 days of paid sick leave per
25 year; established a Food Safety Advisory Council, composed of
26 experts in the food safety industry, who meet quarterly to review
27 company-wide food safety issues and report directly to Chipotle's
28 board; made sweeping leadership changes, including hiring a new

1 CEO and a new General Counsel, both of whom have extensive
2 experience in food safety issues; adopted new training and audit
3 procedures; and made significant changes to its food preparation
4 techniques, including preparing more of its meats and produce in
5 off-site commissaries.

6 44. On January 12, 2016, just a few months into Chipotle's
7 campaign to enhance food safety, Chipotle's Investor Relations
8 Manager represented that "the initial estimate on the cost of all
9 food safety changes is \$80-100 million."

10 **VIII. SOME CHIPOTLE EMPLOYEES REPORTED STRESSFUL WORKING CONDITIONS AND**
11 **INADEQUATE STAFFING AND TRAINING OPPORTUNITIES**

12 45. Some former employees reported that they did not
13 receive sufficient training at the beginning of their employment
14 and were not adequately prepared when they started working at the
15 company's restaurants. Chipotle relied heavily on "on the job" or
16 "shoulder-to-shoulder" training on food safety policies and
17 procedures. Chipotle supplemented this training with "Chip Talk
18 Notes," commonly referred to as "Food Safety Notes" by former
19 employees. These notes were developed to reinforce certain food
20 safety policies and procedures at the store level, and every
21 employee was required to sign a form verifying that he or she
22 reviewed and understood the Food Safety Notes. Some former
23 employees indicated that they did not have sufficient time to
24 review the Food Safety Notes. Chipotle also requires, as part of
25 its training, that employees watch training videos. Some former
26 employees stated that Chipotle did not give them adequate
27 opportunity to view these training videos.

28

1 46. During the period from 2015 to 2018, store-level
2 Chipotle employees felt that they could not stay at home when they
3 were sick. Chipotle had a staffing model for each restaurant that
4 was based on sales volume and safety considerations. Pursuant to
5 this staffing model, each restaurant was required to have a set
6 baseline of employees, regardless of the sales volume, in order to
7 safely and efficiently operate. The staffing model further
8 provided for each restaurant to add additional staffing on an
9 incremental basis as sales volume increased to ensure that each
10 restaurant could comply with Chipotle's food safety policies and
11 procedures. Based on this staffing model, restaurant managers
12 would hire employees and set a roster of team members, who
13 consisted of entry level crew members and lower-level management
14 who were responsible for food storage, food handling, and food
15 safety at each restaurant.

16 47. Despite Chipotle's staffing model, some former Chipotle
17 employees reported feeling stress and pressure because they felt
18 overworked and short-staffed, particularly during peak hours. For
19 example, one former employee noted that when there were supposed
20 to be eight employees on a shift, there were often only three to
21 seven employees. Additionally, some Chipotle employees reported
22 that they were responsible for finding their own coverage for
23 their shifts if they became ill. Due to the pressure of not
24 wanting to let their teammates down, or of finding their own
25 coverage, these employees reported feeling pressure to work while
26 sick, even though this was against Chipotle's sick exclusion
27 policies. For example, one former employee who worked for
28 Chipotle for over four years stated that it was "somewhat

1 difficult" to find a replacement employee and that "very
2 frequently," either the manager covered the sick employee's
3 position, or the shift worked short-handed.

4 48. Many Chipotle employees were teenagers and young adults,
5 who were often expected to quickly learn and perform key food
6 safety and food preparation tasks. Chipotle employees were often
7 expected to learn these tasks through "on the job" training from
8 current Chipotle team members and management. As Chipotle has
9 acknowledged in its SEC reports, Chipotle "may be at a higher risk
10 for food-borne illness outbreaks than some competitors due to
11 [its] use of fresh produce and meats rather than frozen, and [its]
12 reliance on employees cooking with traditional methods rather than
13 automation." Training of Chipotle's employees is critical to
14 ensuring food safety and food handling tasks, particularly because
15 so much of the responsibility for these tasks is placed on entry-
16 level employees who prepare fresh food for consumers under a fast-
17 paced, high-pressure environment.

18 49. Some Chipotle employees described working at Chipotle as a
19 tough job that had high pressure. One former employee at the Simi
20 Valley restaurant noted that "the turnover rate was insane." The
21 turnover for Chipotle as a whole ranged from 121.7% in December 2014
22 to 151% in December 2017. In 2016, when Chipotle had a turnover
23 rate of 131%, other fast casual restaurants had a 122% turnover
24 rate, whereas other quick service restaurants had a 152% turnover
25 rate. Experienced employees noted that the high turnover rate made
26 their jobs even more difficult.

EXHIBIT C

Compliance Program

Chipotle Mexican Grill, Inc. ("Chipotle"), hereby agrees to the following conditions of the deferred prosecution agreement:

1. Chipotle shall, in consultation with its Food Safety Council, develop, maintain, and implement a comprehensive compliance program to ensure that it complies with all applicable federal and state food safety laws, including, but not limited to, the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq. ("FDCA").

The compliance program shall be implemented for at least three years from the date of this agreement.

2. Chipotle shall, in consultation with its Food Safety Council, which it established in 2017, and any other independent contractor or consultant it may choose to retain, within six months of the date of this Agreement:

a) Review in detail all records in Chipotle's possession, including, but not limited to, documents from its Safety, Security & Risk department ("SSR"), training records, emails, notes, and any other materials maintained by the restaurants for the outbreaks that occurred in Simi Valley, California; Boston, Massachusetts; Sterling, Virginia; Powell, Ohio; and Los Angeles, California, from 2015 through 2018;

b) Conduct a root cause analysis of the failures that led to these five outbreaks;

c) Evaluate whether Chipotle's current approach to compliance with state and federal food safety laws and regulations is appropriate given the nature of Chipotle's fresh, non-frozen ingredients, including a review of Chipotle's Hazard Analysis

1 Critical Control Point ("HACCP") plans and Critical Control Points
2 ("CCPs") for each step in its preparation process for each of the
3 five restaurants mentioned in Paragraph 2(a) to determine whether
4 the HACCP plans are adequate;

5 d) Review the implementation of Chipotle's HACCP plans
6 at the five restaurants outlined in Paragraph 2(a) and whether such
7 process is effective, and how it can be improved;

8 e) Review Chipotle's approach to food safety audits,
9 including an analysis of such audits for the five restaurants that
10 were the source of the outbreaks described in Paragraph 2(a) and a
11 determination whether such audits are adequately ensuring that
12 Chipotle's restaurants comply with all federal and state food safety
13 laws perpetually, not only at the time of the audits;

14 f) Review the staffing model employed at the five
15 restaurants discussed in Paragraph 2(a) to determine how to
16 accommodate appropriate staffing in a high turn-over retail
17 environment and an appropriate revised staffing plan to address food
18 safety concerns identified in Paragraph 2(b) above;

19 g) Review existing training policies and procedures for
20 all hourly staff and propose enhancements to ensure hourly staff in
21 a high turn-over retail environment have sufficient time to review
22 the training materials and to ensure that any food safety audits
23 include a review of employee training and knowledge of key food
24 safety concepts and proper food handling practices;

25 h) Identify any additional steps that Chipotle or its
26 employees can take to mitigate the issues that led to the outbreaks
27 identified in Paragraph 2(a); and
28

1 i) Document all such analysis, findings, and
2 recommendations in a comprehensive report (the "Food Safety Plan")
3 that shall be shared with the U.S. Attorney's Office for the Central
4 District of California and the Consumer Protection Branch of the
5 Civil Division of the U.S. Department of Justice (collectively,
6 "DOJ"), and the U.S. Food and Drug Administration ("FDA") upon
7 request.

8 3. After the initial analysis and report outlined in
9 Paragraph 2 is completed, Chipotle shall engage in a similar
10 analysis and documented Food Safety Plan for all Chipotle
11 restaurants on an annual basis. The Food Safety Plans shall be
12 available to the DOJ and FDA upon request.

13 4. In addition to providing the Food Safety Plan to the DOJ
14 and FDA upon request, Chipotle and its employees will respond to any
15 inquiries by the DOJ and FDA pertaining to any foodborne illness
16 outbreaks at any Chipotle restaurants within fifteen (15) business
17 days, including, but not limited to, providing any documentation
18 developed by Chipotle, its Food Safety Council, or any independent
19 contractor Chipotle may hire to assist in completing the Food Safety
20 Plan to the DOJ and FDA upon request.

21 5. Chipotle shall not distribute any food, as defined in 21
22 U.S.C. § 321(f), that fails to comply with the FDCA.

23 6. All terms of this agreement are apart from, and in
24 addition to, any existing authorities of the government or
25 obligations of Chipotle under state and federal law.

26 7. Chipotle's Vice President of Food Safety, or another
27 executive officer designated by Chipotle, shall certify to the DOJ
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1 that Chipotle is in compliance with Paragraphs 2 and 3 of this
2 agreement on an annual basis.

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EXHIBIT D

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2 NICOLA T. HANNA
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3 BRANDON D. FOX
Assistant United States Attorney
4 Chief, Criminal Division
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5 Assistant United States Attorney
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18 Attorneys for Plaintiff
19 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,
23 Plaintiff,
24 v.
25 CHIPOTLE MEXICAN GRILL, INC.,
26 Defendant.

Case No.

STIPULATION REGARDING REQUEST FOR
(1) CONTINUANCE OF TRIAL DATE AND
(2) FINDINGS OF EXCLUDABLE TIME
PERIODS PURSUANT TO SPEEDY TRIAL
ACT; [proposed] ORDER

1 Plaintiff United States of America, by and through its counsel
2 of record, the United States Attorney's Office for the Central
3 District of California and the United States Department of Justice's
4 Consumer Protection Branch (collectively, the "Government"), and
5 defendant CHIPOTLE MEXICAN GRILL, INC. ("CHIPOTLE"), both
6 individually and by and through its counsel of record, Jack P.
7 DiCanio and David C. Scheper, hereby stipulate as follows:

8 1. The Information and Deferred Prosecution Agreement in this
9 case were filed on _____. The Speedy Trial Act, 18 U.S.C. § 3161,
10 originally required that the trial commence on or before _____.

11 2. By this stipulation, CHIPOTLE moves to continue the trial
12 date to _____. This is the first request for a continuance of the
13 trial date.

14 3. CHIPOTLE requests the continuance based upon the following
15 facts, which the parties believe demonstrate good cause to support
16 the appropriate findings under the Speedy Trial Act:

17 a. CHIPOTLE is charged with adulterating food and causing
18 food to become adulterated while held for sale after shipment of one
19 or more of its components in interstate commerce in violation of the
20 Federal Food, Drug, and Cosmetic Act ("FDCA") Title 21, United States
21 Code, Sections 331(k) and 333(a)(1).

22 b. CHIPOTLE has entered into a Deferred Prosecution
23 Agreement with the Government, which was filed on _____.

24 c. In light of the foregoing, the parties represent that
25 additional time is necessary for CHIPOTLE to demonstrate its
26 compliance with the provisions of the Deferred Prosecution Agreement
27 during the term of the agreement.

28

1 d. CHIPOTLE believes that failure to grant the
2 continuance would be likely to make a continuation of the proceeding
3 impossible or result in a miscarriage of justice.

4 e. The Government does not object to the continuance.

5 f. The requested continuance is not based on congestion
6 of the Court's calendar, lack of diligent preparation on the part of
7 the attorneys for the Government or the defense, or failure on the
8 part of the attorneys for the Government to obtain available
9 witnesses.

10 4. For purposes of computing the date under the Speedy Trial
11 Act by which CHIPOTLE's trial must commence, the parties agree that
12 the time period of _____ to _____, inclusive, should be
13 excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and
14 (h)(7)(B)(iv) because the delay results from a continuance granted by
15 the Court at CHIPOTLE's request, without government objection, on the
16 basis of the Court's finding that: (i) the ends of justice served by
17 the continuance outweigh the best interest of the public and CHIPOTLE
18 in a speedy trial; and (ii) failure to grant the continuance would be
19 likely to make a continuance of the proceeding impossible, or result
20 in a miscarriage of justice.

21 5. In addition, the parties agree that the time period of
22 _____ to _____, inclusive, should be excluded pursuant to 18
23 U.S.C. § 3161(h)(2) because the delay constitutes a period during
24 which prosecution is deferred by the attorneys for the Government
25 pursuant to a written agreement with CHIPOTLE, with the approval of
26 the Court, for the purpose of allowing CHIPOTLE to demonstrate its
27 good conduct.

28

1 6. Nothing in this stipulation shall preclude a finding that
2 other provisions of the Speedy Trial Act dictate that additional time
3 periods be excluded from the period within which trial must commence.
4 Moreover, the same provisions and/or other provisions of the Speedy
5 Trial Act may in the future authorize the exclusion of additional
6 time periods from the period within which trial must commence.

7 IT IS SO STIPULATED.

8 Dated: April __, 2020

Respectfully submitted,

9 NICOLA T. HANNA
10 United States Attorney
11 Central District of California

12 _____
13 JOSEPH O. JOHNS
14 MARK A. WILLIAMS
15 Assistant United States Attorneys
16 SONIA W. NATH
17 Special Assistant United States
18 Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

19 Dated: April __, 2020

Respectfully submitted,

20 GUSTAV W. EYLER
21 Director
22 Consumer Protection Branch
23 U.S. Department of Justice

24 _____
25 DANIEL E. ZYTNICK
26 Trial Attorney

Attorney for Plaintiff
UNITED STATES OF AMERICA

1 I am CHIPOTLE's attorney. I have carefully discussed every part
2 of this stipulation and the continuance of the trial date with my
3 client. I have fully informed my client of its Speedy Trial rights.
4 To my knowledge, my client understands those rights and agrees to
5 waive them. I believe that my client's decision to give up the right
6 to be brought to trial earlier than _____ is an informed and
7 voluntary one.

8
9 _____ Date
10 JACK P. DICANIO
11 Attorney for Defendant
12 CHIPOTLE MEXICAN GRILL, INC.

13 I am CHIPOTLE's attorney. I have carefully discussed every part
14 of this stipulation and the continuance of the trial date with my
15 client. I have fully informed my client of its Speedy Trial rights.
16 To my knowledge, my client understands those rights and agrees to
17 waive them. I believe that my client's decision to give up the right
18 to be brought to trial earlier than _____ is an informed and
19 voluntary one.

20
21 _____ Date
22 DAVID C. SCHEPER
23 Attorney for Defendant
24 CHIPOTLE MEXICAN GRILL, INC.

25 I have been authorized by defendant CHIPOTLE to enter into this
26 stipulation. I have read this stipulation and have carefully
27 discussed it with CHIPOTLE's attorney. I understand CHIPOTLE's
28 Speedy Trial rights. On behalf of CHIPOTLE, I voluntarily agree to

1 the continuance of the trial date, and give up CHIPOTLE's right to be
2 brought to trial earlier than _____.

3

4 _____
NAME: Date

5 TITLE:

6 Authorized Representative of
7 Defendant
8 CHIPOTLE MEXICAN GRILL, INC.

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17 Attorneys for Plaintiff
 18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,
 22 Plaintiff,
 23 v.
 24 CHIPOTLE MEXICAN GRILL, INC.,
 25 Defendant.

Case No.

[proposed] ORDER CONTINUING TRIAL
 DATE AND FINDINGS REGARDING
 EXCLUDABLE TIME PERIODS PURSUANT
 TO SPEEDY TRIAL ACT

26 //
 27 //
 28

1 The Court has read and considered the Stipulation Regarding
2 Request for (1) Continuance of Trial Date and (2) Findings of
3 Excludable Time Periods Pursuant to Speedy Trial Act, filed by the
4 parties in this matter on _____. The Court hereby finds that the
5 Stipulation, which this Court incorporates by reference into this
6 Order, demonstrates facts that support a continuance of the trial
7 date in this matter, and provides good cause for a finding of
8 excludable time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161.

9 The Court further finds that: (i) the ends of justice served by
10 the continuance outweigh the best interest of the public and
11 defendant in a speedy trial; (ii) failure to grant the continuance
12 would be likely to make a continuation of the proceeding impossible,
13 or result in a miscarriage of justice; and (iii) pursuant to 18
14 U.S.C. §§ 3161(h)(2), because the parties have entered into and filed
15 a deferred prosecution agreement and the time period would allow
16 defendant to demonstrate its good conduct.

17 THEREFORE, FOR GOOD CAUSE SHOWN:

18 1. The trial in this matter is continued to _____.

19 2. The time period of _____ to _____, inclusive, is
20 excluded in computing the time within which the trial must commence,
21 pursuant to 18 U.S.C. §§ 3161(h)(2), (h)(7)(A), (h)(7)(B)(i), and
22 (B)(iv).

23 3. Nothing in this Order shall preclude a finding that other
24 provisions of the Speedy Trial Act dictate that additional time
25 periods are excluded from the period within which trial must
26 commence. Moreover, the same provisions and/or other provisions of
27 the Speedy Trial Act may in the future authorize the exclusion of
28

1 additional time periods from the period within which trial must
2 commence.

3 IT IS SO ORDERED.

4

5

DATE

HONORABLE
UNITED STATES DISTRICT JUDGE

6

7

Presented by:

8

/s/

JOSEPH O. JOHNS
MARK A. WILLIAMS
Assistant United States Attorneys

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