UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

Case No.	CV 12-5543 DSF (JCx)	Date	12/2/13
Title	Alan Hernandez v. Chipotle Mexican Grill, Inc.		

Present: The Honorable	DALE S. FISCHER, United States District Judge

Debra Plato	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (In Chambers) Order DENYING Motion for Class Certification (Dkt. No. 84)

This proposed class action is based on Chipotle Mexican Grill, Inc.'s alleged practice of serving conventionally raised meats on occasions when "naturally raised" meats were not available, though it had heavily advertised its use of "naturally raised" meats.[1] While the case was initially broader, Plaintiff's allegations now center on the representations made in Chipotle's in-store menu signboards and Chipotle's paper menus.

The proposed class action fails to satisfy the requirements of Rule 23(b)(3). Rule 23(b)(3) focuses on the relationship between the common and individual issues. Class certification under Rule 23(b)(3) is proper when common questions present a significant portion of the case and can be resolved for all members of the class in a single adjudication. The predominance inquiry under Rule 23(b) "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997) (citation omitted). Rule 23(b)(3) also requires the Court to find "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Here, common

[1] According to Chipotle, "naturally raised" means "coming from animals that are fed a pure vegetarian diet, never given antibiotics or hormones, and raised humanely." (Parker Decl., Ex. K (2010 Annual Report) at p. 3.)

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questions do not predominate over individual issues, and the class action device is not a fair and efficient way to provide a fair opportunity for class members to obtain relief or for Chipotle to defend itself against claims.

While there are some common questions, many key issues can only be handled individually. Most fundamentally, the questions of when a class member ate at Chipotle, the exact location where he ate, and which meat (if any) he ate are all not subject to class treatment. In some consumer class actions, these types of issues will exist, but be of limited importance because either the defendant or the class members have or could be expected to have records of the purchase of the good or service or to have retained the purchased item. In other cases, the class will be all purchasers of a particular product within some reasonably large time period, so the details of the purchase are not significant. Here, the dispute concerns a very low price transaction that neither the class members nor Chipotle maintain any specific record of or could be expected to recall. More importantly, the alleged misconduct took place only with regard to varying products at varying locations within limited time frames. In many class actions the specific date of a transaction or its particular location might not be very important. Here it is critical because certain stores were serving certain conventional meats only at certain times. Therefore, a class member needs to know with some certainty – and Chipotle should be allowed some mechanism for confirming or contesting that certainty – the date, location, and particular meat purchased. That kind of certainty in a class action that encompasses purchases of burritos (for example) between June 2008 – more than five years ago – and now is not practical. Credit card records could provide some evidence of class members' purchases, but credit card records would not provide the critical detail of which meat was purchased in any given transaction. At best, there may be some class members who regularly eat – i.e., weekly or more often – at the same Chipotle location and always order the same thing, but presumably this is a relatively small subgroup of the proposed class.

Further, the important question of whether a class member saw a so-called point-of-purchase (POP) sign when a particular purchase was made cannot be handled on a classwide basis.[2] For each purchase when naturally raised meat was not being served,

[2] According to Chipotle, restaurants experiencing supply shortages were emailed instructions to post POP signs informing customers of a temporary shortage of naturally raised meats. (Chrisman Decl. ¶¶ 12 et seq.) Chipotle does not contend, and there is no record evidence that, it ever changed the menu board or paper menus to inform customers of supply shortages. Chipotle often instructed employees to post the signs at the tortilla station. (See, e.g., Chrisman Decl., Ex. A-M.) The tortilla station is located at the beginning of the line where a

there are at least four possibilities: (1) the sign was there and the class member saw it, (2) the sign was there and the class member did not see it due to Chipotle's negligence, (3) the sign was there and the class member did not see it due to the class member's negligence, and (4) the sign was not there. Plaintiff suggests that the Court can skip over this issue, contening that the signs were insufficient to inform consumers that conventionally raised meat was being served. But even if the sufficiency of the POP signs were an issue that could be handled on a classwide basis, it does not negate the existence of the further critical issue of whether a class member saw the sign on a particular occasion – an issue that cannot be handled on a classwide basis.

Many of the individual issues regarding liability are also reasons why the class action mechanism is not fair and efficient in this case. Even if the Court were to assume that after certification the parties would reach a classwide settlement and obviate some of the problems of trying the case, there is no reason to believe that class members could be compensated appropriately. Presumably, the claims administrator would have to seek claims from everyone who ate meat at Chipotle during the class period. The claims would require the claimants to list every time they ate at Chipotle, the date – at least month and year, the specific location – "San Francisco" is not going to be good enough, and the specific item purchased. The Court is confident that very few people will be able to provide that information. People will either (1) lie, (2) attempt to fill out the claim form as best they can but be unable to do so accurately, or, most likely, (3) not bother. Money would be given out basically at random to people who may or may not actually be entitled to restitution. This is unfair both to legitimate class members and to Chipotle.

The motion for class certification is DENIED.

IT IS SO ORDERED.

customer first orders food. (Parker Decl., Ex. E (Chrisman Depo. Tr.), 130:7-9.)