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 ORIGINAL FILED  
 Superior Court of California  
 County of Los Angeles

JUL 24 2019

Sherril R. Carter, Secretary, Clerk of Court  
 By [Signature], Deputy  
 Steven Drew

BY FAX

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

MELISSA CRUZ, Individually and on  
 Behalf of All Others Similarly Situated,  
 Plaintiff,

vs.

CHIPOTLE MEXICAN GRILL, INC., a  
 California Corporation

Defendants,

Case No.

**19STCV25669**

CLASS ACTION

COMPLAINT FOR VIOLATION OF:

1. Consumer Legal Remedies Act,  
 Cal. Civ. Code §§ 1750, et seq.;
2. False Advertising Law,  
 Cal. Bus. & Prof. Code §§ 17500, et  
 seq.;
3. Unfair Competition Law, Cal. Bus. &  
 Prof. Code §§ 17200, et seq.

DEMAND FOR JURY TRIAL

Plaintiff Melissa Cruz ("Plaintiff"), by and through her attorneys, individually and on behalf of all others similarly situated, brings this Class Action Complaint ("Complaint") against Defendant Chipotle Mexican Grill, Inc., a California Corporation ("Chipotle" or "Defendant"), and makes the following allegations based upon knowledge as to herself and her own acts, and upon information and belief as to all other matters, as follows:

1 INTRODUCTION

2 1. This is a class action brought by Plaintiff individually and on behalf of all other  
3 individuals similarly situated in California who purchased or paid for Chipotle food and beverage  
4 products ("Food Products") marketed, advertised, and/or sold by Defendant during the period from  
5 April 27, 2015 to the present (the "Class Period").  
6

7 2. Chipotle owns and operates a nationwide chain of casual Mexican fast-food  
8 restaurants that sell four main menu items: burritos, burrito bowls (a burrito without the tortilla),  
9 tacos, and salads. Since 2009, Chipotle has marketed itself as serving "Food With Integrity," and  
10 sets itself apart from other fast-food chain competitors by claiming to serve locally-sourced  
11 produce, antibiotic and hormone free livestock raised in humane conditions, and produce farmed  
12 using environmentally-friendly techniques. Chipotle claims that "[w]ith every burrito we roll or  
13 bowl we fill, we're working to cultivate a better world."  
14

15 3. Chipotle has carefully tailored its public image by marketing to healthy-lifestyle and  
16 environmentally conscious consumers that it knows are willing to pay premium prices for its food  
17 products because they align with the consumers' ethical eating choices. As part of this public  
18 image, beginning in 2013, Chipotle began listing its food ingredients on its website, indicating  
19 whether an ingredient was organic, locally produced, had a preservative, or contained a genetically  
20 modified organism ("GMO").  
21

22 4. The potential health impact of GMOs has been the subject of much scrutiny and  
23 debate within the food and science industries, but Chipotle knows customers attach an unhealthy,  
24 negative perception towards them. Capitalizing on this perception, in April 2015, Chipotle took  
25 the unprecedented step among fast-food restaurants by launching a multi-media publicity campaign  
26 touting that it was the "first national company" in the food industry to serve a menu devoid of  
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28

1 GMOs. Chipotle has plastered its GMO-free message on television commercials, billboards, social  
2 media, store fronts, and in-store signage. Chipotle represents to customers that, if they eat at  
3 Chipotle, they will not be eating GMOs. Chipotle's marketing campaign has been a resounding  
4 success for the company, which saw a 100+ point jump in its stock price on the New York Stock  
5 Exchange in the four months since its public announcement.

6  
7 5. But as Chipotle told consumers it was "G-M-Over it," the opposite was true. In truth and  
8 in fact, Chipotle's menu has never been at any time free of GMOs. Specifically, Chipotle's menu  
9 is substantially reliant on Soybean and Corn products both of which even in "Non-GMO" form  
10 contains low level presence of GMO's. While Chipotle knows that its menu contains ingredients  
11 with low levels of GMOs, it takes no meaningful steps to clarify consumer misconceptions in its  
12 advertisements and on its billboards, both in stores and in print, which instead say "all" of the  
13 ingredients used in its Food Products are "non-GMO". Moreover, it stood idly by and approved if  
14 not out rightly encouraged the publics misconception that its food was entirely GMO free even  
15 while it knew that it was not.

16  
17 6. As a result of Chipotle's conduct, customers like Plaintiff Cruz have been  
18 deceived into buying Chipotle's food, or paying more for Chipotle products than they would have  
19 otherwise paid. Accordingly, Plaintiff brings a proposed class action against Chipotle arising from  
20 Chipotle's deceptive conduct that seeks injunctive and other equitable relief and will be later  
21 amended to request restitution and disgorgement of proceeds from the offending practice as set  
22 forth herein.

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## PARTIES

1  
2 7. Plaintiff Melissa Cruz is a resident of Los Angeles, California. During the Class Period,  
3 she purchased Chipotle's Food Products, relying on Defendant's "Food With Integrity" campaign  
4 and believing that its Food Products were a healthy alternative based on Chipotle's representations.  
5 Plaintiff in particular further relied on the representation that Defendant's Food Products did not  
6 contain any GMO ingredients, having seen or heard advertisements, and in-store signage and staff  
7 representations that Chipotle is "GMO-free" and used "only non-GMO ingredients," in deciding to  
8 continue her purchases at Chipotle. Plaintiff would not have purchased from Defendant at the price  
9 she had paid, or purchased it at all, had she known that the representations made concerning  
10 Defendant's Food Products were materially false and misleading. Plaintiff would like to patronize  
11 and would patronize Chipotle in the future if it were to correct its offending conduct.  
12  
13

14 8. Defendant Chipotle Mexican Grill, Inc., is a California corporation headquartered in  
15 Newport Beach, CA. Founded in 1993, Chipotle develops and operates fast-casual and fresh  
16 Mexican food restaurants. As of February 2019, Chipotle has over 2,500 restaurants  
17 throughout the United States, with over 400 restaurants in California alone. Chipotle has reported  
18 revenues of \$1.2 billion.  
19

## JURISDICTION AND VENUE

20  
21 9. This Court has jurisdiction over the subject matter of this action because it strictly relies  
22 on California laws.

23 10. This Court has personal jurisdiction over Defendant because Defendant is a resident of  
24 this State and is authorized to do business and does conduct business in California, has specifically  
25 marketed, advertised, and sold its Food Products in California, and has sufficient minimum contacts  
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1 with this state and/or sufficiently avail itself of the markets of this state through its promotion, sales,  
 2 and marketing within this state to render the exercise of jurisdiction by this Court permissible.

3 11. Venue in this Court is proper because Plaintiff is a resident of this County and the  
 4 transactions and events giving rise to this case arose in Los Angeles.

## 5 FACTUAL ALLEGATIONS

### 6 I. Genetically Modified Organisms

7  
 8 12. Generally speaking a "GMO" is usually a plant hybrid containing a "biotech" or  
 9 "transgenic" trait derived from the genetic material of a different donor organism, the process of  
 10 which does not occur in nature.

11 13. With regards to Chipotle, the subject of concern herein is its reliance on Soybeans and  
 12 Corn as a major ingredient that comprises the bulk of the food it serves. Specifically, Chipotle's  
 13 "Sofritas" is a soy based vegetarian product that is offered alongside its traditional chicken, pork  
 14 and beef proteins. Corn is served in the form of taco shells, tortilla chips, corn salsa and until about  
 15 late 2017 to early 2018 when it was discontinued, Chipotle had corn tortilla as a Burrito wrapping.  
 16

17 14. As of 2018 GMO soybeans represents 94% of all soybean acreage planted in the U.S.<sup>1</sup>  
 18 As of 2018, GMO corn represents about 92% of all corn acreage planted in the U.S.<sup>2</sup> Respectively,  
 19 of those 6% and 8% remaining planted acreage grown with "conventional" Non-GMO seed, said  
 20 acreage are further split into several specialty niche markets such as 'non-gmo', organic and other  
 21 specified niche traits such as high protein, high oil content and white, blue or waxy in the case of  
 22 corn. Of these remaining "specialty markets" only the "non-gmo market" is concerned about the  
 23  
 24  
 25

26 <sup>1</sup> <https://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us/recent-trends-in-ge-adoption.aspx>

27 <sup>2</sup> <http://www.worldofcorn.com/#biotech-shares-of-us-corn-acres-planted>  
 28

1 non-gmo purity level of the product.<sup>3</sup> Thusly, the true “non-gmo” planted acreage in the U.S is  
 2 significantly less than the 6% and 8% as represented by goverment data  
 3

## 4 II. Non GMO Purity

### 5 A. Purity Levels

6  
 7 15. According to a 2018 Pew Research Center survey, about 49% of all U.S. respondents  
 8 believe that consuming GMO foods is worse for one’s health than consuming foods made without  
 9 GMO’s.<sup>4</sup>

10 16. Because the safety and the perception that GMOs are unnatural and harm the  
 11 environment is so prevalent, regulations around the world have been promulgated to control the  
 12 production and marketing of GMOs and of products derived from GMOs. Calls have been made for  
 13 the banning of GMO imports in the EU and Japan, and laws have been passed mandating the  
 14 labeling of genetically modified (GM) products in the EU and Asia.<sup>5</sup>

15  
 16 17. The primary driver for non-GMO crops has been and remains the export market, mainly  
 17 in Asia. Japan and Korea are the 2 major US export customers for this grain. Both countries have  
 18 GMO label laws in place that require notice on a product label of the presence of biotech traits.  
 19 Many Japanese and Korean consumer product companies, particularly food companies, choose to  
 20 source non-GMO crops in order to avoid putting such a notice on their products.  
 21

22 18. Japan defines non-GMO corn as that corn which is a minimum of 95% corn of no  
 23 detectable traits. So, Japan has set a 5% threshold of tolerance for unintended or “adventitious”  
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25 <sup>3</sup> <https://emergence.fbn.com/real-difference-between-conventional-nongmo-organic-corn>

26 <sup>4</sup> [www.pewresearch.org/science/2018/11/19/public-perspectives-on-food-risks/](http://www.pewresearch.org/science/2018/11/19/public-perspectives-on-food-risks/)

27 <sup>5</sup> [https://www.iatp.org/sites/default/files/Economics\\_of\\_Non-GMO\\_Segregation\\_and\\_Identity\\_.htm](https://www.iatp.org/sites/default/files/Economics_of_Non-GMO_Segregation_and_Identity_.htm)  
 28

1 presence (hereinafter "AP") of biotech traits in the corn grain they import. When non-GMO corn is  
2 originated in the United States, these tolerance thresholds are risk-managed and usually trade at 3%  
3 levels. South Korea, on the other hand, uses a minimum standard of 97%, thus a threshold of  
4 tolerance for AP of 3%. These programs often trade at the point of origination at a 2% threshold of  
5 tolerance. Finally, Europe has the most restrictive standards for non-GMO, employing a 99.1%  
6 level of no detectable GMO traits, or a 0.9% threshold of tolerance for the adventitious presence of  
7 these traits. These facts apply to all other GMO crops.

9 19. In comparison, the U.S. non-GMO domestic market is relatively small. There are  
10 growers and consumers alike who demand choice and prefer to not utilize biotech traits. However,  
11 in the U.S. market there is currently no standard definition of "non-GMO"; rather, it is typically  
12 whatever the particular market/contract buyer wants it to be. This ambiguity presents an obvious  
13 challenge for growers and buyers. As non-GMO purity level starts from the purity of the seeds used  
14 to produce the non-GMO crop, seed manufacturers respond by producing seeds with a purity level  
15 that would satisfy the larger regulated/export market demands. This applies to all non-GMO  
16 production, not just production for US markets. Growers must know for certain if the threshold of  
17 tolerance for GMO traits is defined in the contract as 3%, 2%, 0.9%, or some other standard.<sup>6</sup>  
18 In the U.S. as a practical matter the only non GMO "purity standard" is that set forth by the "Non  
19 GMO project" verified standard that sets a limit of adventitious GMO presence at 0.9%. This 0.9%  
20 is often risk managed by starting out with purchasing crop seeds with a 0.5% purity level or less. It  
21 is impossible to produce crop seeds and therefore crops with 100% non GMO material.<sup>7</sup>  
22  
23  
24  
25

26 <sup>6</sup> <https://www.pioneer.com/home/site/us/agronomy/corn-specialty-markets/>

27 <sup>7</sup> Id., see also <https://emergence.fbn.com/real-difference-between-conventional-nongmo-organic-corn>  
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1 B. Seed Purity

2 20. There is no practical way to produce crops that has a lower GMO presence than the  
3 parent seed. In the U.S., seed producers offer Ultra-Pure/High Purity seeds from 0.5% down to  
4 0.1 % with NO seed producers offering seeds with absolute 0.0 % GMO presence. Pure grade Non  
5 GMO seeds are offered at 1%. The more common Conventional/Non-GMO seeds are offered with  
6 purity levels of around 1%-5%.

8 C. Unavoidable Contamination

9 21. Starting with the purity level of the seeds planted as the base level, crops are subject to  
10 further contamination during each phase of production such as planting, growing, and harvesting the  
11 crop; and drying, storing, handling and transporting the grain.

12 22. Corn is a cross-pollinating crop in which most pollination results from pollen dispersed  
13 by wind and gravity. As such it is more susceptible to "pollen drift" as pollen from GMO corn in  
14 neighboring fields contaminate Non GMO corn crops. As GMO corn comprises 92% of the U.S.  
15 corn acreage planted and each individual corn plant at its peak can produce 500,000 pollen grains  
16 per day<sup>8</sup>, it is practically a given that genetic contamination occurs in Non GMO corn crops. Unlike  
17 Corn, Soybeans are self-pollinating and thus less susceptible to pollen contamination. However,  
18 because of the sheer number of acreages planted, soybeans contamination risks occur during harvest  
19 and post-harvest processing of the crop and the grains derived therefrom.

20 23. As a major buyer of agricultural products, Chipotle has or should have a clear and stated  
21 tolerance threshold for the adventitious presence of GMO contamination in the soybean and corn  
22 products it purchases. Based on the current state of the agricultural industry, it is impossible for  
23 Chipotle to contract for 100% non-GMO content in its purchases. It is also impractical to the point  
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28 <sup>8</sup> <https://www.lathamseeds.com/2011/07/too-hot-for-corn/>



1 of impossible for Chipotle to contract for 99.9%-99.5% non-GMO purity in its purchases.

2 Regardless of what the purity level Chipotle demands from its suppliers, the fact that its tolerance  
3 for low level presence of GMO's in its foods is less than 100% makes its no-GMO claims deceptive  
4 and misleading.

### 7 III. Chipotle's Advertising and Marketing

#### 8 A. Chipotle's "Food With Integrity" Campaign

9 24. Since 2009, Chipotle has marketed, sold, and prided itself on serving "Food With  
10 Integrity," promoting its brand and Food Products as a leader in healthier food and ethical  
11 farming practices. In addition to print, outdoor, transit and radio ads, Chipotle conducts online  
12 advertising and strategic promotions to demonstrate its "Food With Integrity" mission. Chipotle's  
13 video and music programs, events and festivals such as its "Cultivate Festival," and digital, mobile,  
14 and social media campaigns (such as its three-minute "The Scarecrow" and two-minute "Back to  
15 the Start" Youtube.com campaigns) have permitted Chipotle to differentiate itself from other fast  
16 food companies as the industry leader in being health and environmentally conscious.

17 25. Beginning in March 2013, Chipotle released a comprehensive list of all of its ingredients  
18 on its online website, which was reportedly a first among fast-food chains. When Chipotle first  
19 listed its ingredients online, 12 of the 24 ingredients listed contained the presence of  
20 GMOs, including, but not limited to, Chipotle's tortillas, rice, salad dressing, tortilla chips, and its  
21 meat products. Chipotle stated, however, that it was committed "to remov[ing] the GMOs from"  
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1 its Food Products “to the fullest extent possible.” Concomitantly, on social media Chipotle was  
 2 announcing that it was working towards being GMO free<sup>9</sup> and that it would soon be “GMO free”<sup>10</sup>

3 B. Chipotle’s April 2015 “GMO Free” Announcement

4 26. On or about April 27, 2015, Chipotle announced that as part of its “Food with Integrity”  
 5 brand that it would only prepare food with ingredients that are free of GMOs. Steve Ells, Chipotle’s  
 6 founder and co-chief executive at the time, stated in regards to being “GMO free” that, “Chipotle is  
 7 showing that there is a better way to do fast food,... They say these ingredients are safe, but I think  
 8 we all know we’d rather have food that doesn’t contain them.”<sup>11</sup>

9 27. Chipotle’s announcement was a strategic marketing campaign to entice new health  
 10 minded consumers and retain current ones. As Phil Lampert noted in his April 28, 2015 Forbes’  
 11 article, “Chipotle’s Non-GMO Policy Changes Everything,” “Chipotle’s move will no doubt attract  
 12 new customers to the chain’s restaurants and most likely bring in an entirely new customer base,  
 13 not for the food, but because they align with the chain’s ethical positions. Some will like the food  
 14 and come back for more.”

15 28. In an April 30, 2015 article for New York Magazine, Jesse Singal pointed out that  
 16 Chipotle would “score points” by advertising that it was “ditching” GMOs:  
 17 Most consumers aren’t going to carefully analyze the scientific consensus on a given issue – who  
 18 has time for that? Rather, they use mental shortcuts, taking cues from people and institutions they  
 19

20  
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 22  
 23 <sup>9</sup> On July 15, 2014 Chipotle tweeted from its official twitter account @Chipotletweets, “Thanks for being a fan! We  
 24 aren’t completely GMO free, but we’re working on it.”

25 <sup>10</sup> On January 30, 2015 Chipotle social media strategist Rusty Parch, tweeted from Chipotle’s official twitter account  
 26 “We are almost GMO free!...” -Rusty

27 <sup>11</sup> <https://money.cnn.com/2015/04/26/investing/chipotle-gmo-free/index.html>

1 trust. Chipotle has developed a reputation for corporate responsibility and making careful decisions  
2 about the ingredients on its menu, and Chipotle ditched GMOs — therefore, GMOs must be bad.  
3 Chipotle scores points, science loses.

4         29. On billboards and in its marketing and advertising, Chipotle declared that its Food  
5 Products are made from “non-GMO ingredients.” Chipotle also took to social media, announcing  
6 to its 684,000 followers on Twitter that: “We’re now making all of the food at our US restaurants  
7 with only non-GMO ingredients.”

8         30. On store fronts, Chipotle advertised “A Farewell to GMOs,” noting that “[w]hen it  
9 comes to our food, genetically modified ingredients don’t make the cut”  
10

11         31. Defendant advertises and represents on its in-store billboards that it uses  
12 “only non-GMO ingredients,” representing to consumers that all of its ingredients, do not contain  
13 GMO’s.  
14

15         32. Defendant’s nationwide advertising campaign for its Food Products has been  
16 extensive and comprehensive throughout the Class Period. Defendant has spent tens of millions of  
17 dollars conveying to consumers throughout the United States its deceptive message that Chipotle’s  
18 Food Products use “only Non-GMO ingredients” and leading reasonable consumers including  
19 plaintiff and class members that Chipotle serves food that does NOT contain GMO’s.  
20

21         33. As a result of Chipotle’s deceptive and misleading messages and omissions about its  
22 Food Products, conveyed directly through its marketing and advertising campaigns, it has been  
23 been very successful in its “Food With Integrity” brand in general and with its “Only non-GMO  
24 ingredients” campaign specifically, that it’s brand is synonymous with a healthier alternative to its  
25 fast food competitors and a convenient place to eat to avoid consuming any GMO’s.  
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1 As such, Chipotle was able to charge consumers a significant price premium for its Food Products  
 2 over other fast-food restaurants by convincing consumers to pay for a purportedly superior product,  
 3 as its advertising and marketing misleadingly convey.

### 4 III. Defendant's False, Misleading and Deceptive GMO Free Claims

5 34. Chipotle's false and misleading representation to consumers claiming that its food  
 6 products do not have GMOs have been, and continue to be, material to consumers,  
 7 including Plaintiff and other members of the putative class, and Defendant knows that its  
 8 misleading representations are material in nature. Were the presence of GMOs in food not material  
 9 to consumers, Chipotle would not focus its marketing and advertising to claim that it is the first  
 10 GMO-free fast-food restaurant, and Chipotle would not be able to charge customers premium  
 11 prices for its purportedly "non-GMO" Food Products.  
 12

13 35. Defendant's advertising and marketing claims that its Food Products are made with  
 14 "only Non-GMO ingredients" and that "all" of its Food Products are "only non-GMO" or that its  
 15 products do not have GMO's are false, misleading, deceptive, unfair and unconscionable because  
 16 Chipotle knows that its food products, namely the corn and soy based food products it serves  
 17 contains or is likely to contain low level presence of GMO's from at least 0.1% to as much as 3% -  
 18 5%. Additionally, Defendants marketing claims are deceptive as it misleads reasonable consumers  
 19 into believing that there is NO risk of consuming GMO's from its food when in truth and in fact,  
 20 consumers continue to be at risk of consuming GMO's.  
 21

22 36. Among its otherwise false and misleading statements on its website, Chipotle  
 23 concedes in disclaimers that its foods are in fact NOT GMO free. Chipotle's disclaimer states,  
 24 "...we identify our ingredients as "non-GMO" rather than "GMO-free" or other terminology that  
 25  
 26  
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1 might be misunderstood as a guarantee of absolutely zero genetically engineered content.”<sup>12</sup>

2 However, this disclaimer itself is patently false as Chipotle has been and continues to encourage,  
3 condone and or otherwise benefit from the publics confusion as to Defendant’s distinction between  
4 “non GMO” and “GMO-free. Specifically, as part of its “GM Over it” campaign, Chipotle  
5 participated in wide spread news media coverage claiming that Chipotle is GMO-free.<sup>13</sup> Despite  
6 defendants’ knowledge of the falsity of these claims, Defendant did not correct the record choosing  
7 to benefit from the confusion that it had created.  
8

9 37. Leading up to the “GM Over it” campaign, on its official social media twitter account,  
10 Chipotle’s Social Media Manager Joe Stupp, on July 20, 2013 announced, ‘...but right now the only  
11 **guaranteed GMO free corn** is in our salsa. On July 30, 2013 Mr. Stupp stated “[t]he tofu and the  
12 corn salsa are both **GMO free**.” Social Media Strategist Candice Stewert, on February 3, 2014  
13 announced “you’ll be glad to know we’ll be **GMO free** by the end of the year.” During the GM-  
14 Over it” campaign, Defendant on social media would also “like”<sup>14</sup> twitter posts that mistakenly  
15 claim that Defendant was GMO free.<sup>15</sup> On May 17, 2015, a user on twitter, tweeted to Defendant,  
16 “@ChipotleTweets thank you for going #GMOfree #Innovative #Progress #Leader.” Chipotle’s  
17  
18

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19 <sup>12</sup> <https://www.chipotle.com/contact-us>

20 <sup>13</sup> See “Chipotle Is Now GMO Free”, <https://money.cnn.com/2015/04/26/investing/chipotle-gmo-free/index.html>; see  
21 also [https://www.huffpost.com/entry/chipotle-gmo-free-food\\_n\\_7149040](https://www.huffpost.com/entry/chipotle-gmo-free-food_n_7149040); see also  
22 <https://www.fastcompany.com/3045494/chipotle-is-now-completely-gmo-free>; see also  
23 <https://www.foxnews.com/food-drink/chipotle-becomes-first-major-chain-to-go-entirely-gmo-free>

24 <sup>14</sup> On social media site Twitter “Likes are represented by a small heart and are used to show appreciation for a Tweet.

25 <sup>15</sup> On Jun 4, 2015, Defendant “liked” a tweet from a user claiming, “@ChipotleTweets had a yum burrito for lunch  
26 yesterday. Thanks for going #gmo-free. On April 27, 2015 Defendant liked a tweet claiming, “@ChipotleTweets Thank  
27 you for standing ur ground, hearing the voice of ur customers, going against the grain #GMOfree #LEADtheWay”;  
28

1 Social Media Manager Joe Stupp, respondent on the same day saying, "@Dr\_RyanG Thank you for  
2 your support! -Joe."

3 38. Even after the "GM Over it" campaign was concluded, Chipotle continued to reinforce  
4 the publics mistaken belief that it was "GMO free". For example, a twitter user on April 17, 2017  
5 proclaimed to defendants official twitter account, "@ChipotleTweets I somehow missed the  
6 awesome news that you are now #GMOfree. So excited to have a safe fast food option now!" On  
7 April 17, 2017 Defendant responded, "Indeed, and that news is about two years old ☺ check out  
8 [http://www.chipotle.com/real -Zach](http://www.chipotle.com/real-Zach)". On July 25, 2017, chipotle "liked" a user post claiming,  
9 "You are the only restaurant that truly cares about the people!! ❤️👍us we love you!! #GMOfree  
10 4 life 🍌🍌🍌 🍌🍌".  
11

12 39. To the extent fast-food consumers review Chipotle's website, it is misleading because  
13 Defendant only discloses this information on its website because it knows its fast-food  
14 customers never need to visit Chipotle's website to buy food, and are highly unlikely to seek out  
15 this information when simply deciding where to get lunch or dinner. Moreover, the disclaimer is  
16 hidden deep on its website requiring at least 4 mouse clicks to navigate to its location assuming the  
17 user knows that the GMO information is under its 'Frequently Ask Questions (FAQ's) page which  
18 itself is under the "Contact Us" page.  
19

20 40. Consumers as a practical matter rely on Chipotle's internet, mass media, and in-store  
21 advertising as well it's "brand" as being GMO-free to choose Chipotle over its competitors because  
22 of materially false information Chipotle has promulgated into the public conscious regarding its  
23 Food Products. Thus even if the Non-GMO marketing campaign ends, the belief that Chipotle is  
24 "GMO free" is now so ingrained in its Brand and slogan of "Food with Integrity", that absent a  
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1 good faith corrective advertising campaign, the deception continues and plaintiff and other  
2 reasonable consumers will continue to be harmed.

3 41. Aside from the one online disclaimer about its food being actually NOT GMO-free,  
4 Chipotle has not provided similar disclaimers in its stores or through any of the various mediums  
5 which it uses to reach out to the public. Moreover, it has not taken the steps to train its employees  
6 to distinguish the difference between non-GMO and GMO-free and that Chipotle in fact does NOT  
7 serve GMO free food.  
8

9 42. Food is considered misbranded under the Federal Food, Drug and Cosmetic Act  
10 (“FDCA”) if “its labeling is false or misleading in any particular,” or if it does not contain certain  
11 information on its label or labeling. See 21 U.S.C. § 343. If any representation in the labeling is  
12 misleading, the entire food is misbranded. Because Defendant has made and continues to make  
13 misleading claims that “all” of the ingredients comprising its Food Products are “non-GMO” and or  
14 GMO-Free when the representation is false and misleading, Chipotle is in violation of the FDCA.  
15

#### 16 IV. Chipotle’s Concealment

17 43. Defendant is and remains under a duty to Plaintiff and the putative class to disclose  
18 the facts, as alleged herein. The duty to disclose the true facts arises because, as marketer and  
19 seller, Defendant is in a superior position to know the true character and quality of its Food  
20 Products and the true facts are not something that Plaintiff and putative class members could,  
21 without reasonable diligence, have discovered independently prior to purchase. Furthermore, said  
22 duty to disclose also arises from Defendants conduct in spreading, enabling, condoning or otherwise  
23 encouraging the mistaken belief that all its food products are GMO-free.  
24

25 ///



1           44. The facts concealed and/or not disclosed to Plaintiff and the Class, specifically that  
2 consumers are not consuming “only non-GMO ingredients” and or “GMO-free ingredients” or that  
3 they in fact are indeed consuming food that are or are highly likely to contain genetically  
4 engineered germplasm are material facts in that a reasonable person would have considered them  
5 important in deciding whether or not to purchase (or pay the same or premium price for) a Chipotle  
6 Food Product.  
7

8           45. Defendant intentionally concealed and/or failed to disclose to consumers that not all  
9 of the ingredients Chipotle uses in its Food Products are GMO-free for the purpose of inducing  
10 Plaintiff and putative class members to act thereon.  
11

12           46. Plaintiff and the putative class members justifiably acted upon, or relied upon to  
13 their detriment, the concealed and/or non-disclosed material facts as evidenced by their purchase of  
14 Chipotle’s Food Products. Had they known of the true character and quality of the ingredients  
15 used in Chipotle’s Food Products, Plaintiff and the putative class members would not have  
16 purchased (or would have paid less for) such products.  
17

18           47. As a direct and proximate cause of Chipotle’s misconduct, Plaintiff and the putative  
19 class members have suffered by consuming more GMO than they were led to believe and were  
20 otherwise placed at a higher risk of consuming more GMO’s than they were led to believe.  
21

22           48. As a direct and proximate cause of Chipotle’s misconduct, Plaintiff and the putative  
23 class members have suffered actual damages. Defendant’s conduct has been and is malicious,  
24 wanton and/or reckless and/or shows a reckless indifference to the interests and rights of others.  
25

#### 26 CLASS ACTION ALLEGATIONS

27           49. Plaintiff brings this nationwide class action on behalf of herself and all members of the  
28 following class (the “Class”): All persons residing in California, during the period April 27, 2015

1 to the present, who purchased and/or paid for Chipotle Food Products. Excluded from the Class  
2 are: (1) any Judge or Magistrate presiding over this action and members of their families; (2)  
3 Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which  
4 Defendant has a controlling interest, and its current or former employees, officers, and directors; (3)  
5 counsel for Plaintiff and Defendant; and (4) legal representatives, successors, or assigns of any such  
6 excluded persons.  
7

8 50. The Class are so numerous that joinder of all members is impracticable. Though the  
9 exact number and identities of Class members are unknown at this time, Defendant's sales as of  
10 2018 resulted in revenues of \$1.2 billion. Moreover, Defendant has over 2,500  
11 restaurants, with over 400 restaurants in California alone. Based on these figures, it appears that the  
12 membership of the Class is in the tens of thousands.  
13

14 51. Common questions of law and fact exist as to all Class members. These common  
15 questions of law or fact predominate over any questions affecting only individual members of the  
16 Class. Common questions include, but are not limited to, the following:

- 17 (a) Whether Defendant engaged in deceptive and unfair business and trade  
18 practices alleged herein;  
19  
20 (b) Whether Defendant knowingly concealed or omitted material information  
21 concerning the ingredients in its Food Products;  
22  
23 (c) Whether Defendant falsely and deceptively misrepresented in its  
24 advertisements and promotional materials, and other materials, that all of its  
25 Food Products were made with only "no-GMO ingredients";  
26  
27 (d) Whether Defendant represented that its Food Products and their ingredients  
28 have characteristics, uses, benefits, or qualities that they do not have;

1 (e) Whether the Class has been injured by virtue of Defendant's unfair and/or  
2 deceptive business practices and conduct;

3 (f) Whether Class members that purchased Defendant's Food Products suffered  
4 monetary damages and, if so, what is the measure of those damages; and

5 (g) Whether the Class is entitled to injunctive relief.  
6

7 52. Plaintiff's claims are typical of the claims of the respective Class she seeks to  
8 represent, in that the named Plaintiff and all members of the proposed Class has suffered similar  
9 injuries as a result of the same practices alleged herein. Plaintiff has no interests adverse to the  
10 interests of the other members of the Class.

11 53. Plaintiff will fairly and adequately protect the interests of the Class, and has retained  
12 attorneys experienced in class actions as their counsel.  
13

14 54. Plaintiff and other members of the Class have suffered damages as a result of  
15 Chipotle's unlawful and wrongful conduct. Absent a class action, Chipotle will retain substantial  
16 funds received as a result of its wrongdoing, and such unlawful and improper conduct shall, in  
17 large measure, not go remedied. Absent a class action, the members of the Class will not be able to  
18 effectively litigate these claims and will suffer further losses, as Defendant will be allowed to  
19 continue such conduct with impunity and retain the proceeds of its ill-gotten gains.  
20

21 55. Plaintiff avers that the prerequisites for class action treatment apply to this action  
22 and that questions of law or fact common to the Class predominate over any questions affecting  
23 only individual members and that class action treatment is superior to other available methods for  
24 the fair and efficient adjudication of the controversy which is the subject of this action. Plaintiff  
25 further states that the interests of judicial economy will be served by concentrating litigation  
26 concerning these claims in this Court, and that the management of the Class will not be difficult.  
27  
28

CLAIMS FOR RELIEF

COUNT I

(Violation of the California Consumer Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.)

56. Plaintiff repeats and realleges each and every allegation contained above, and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

57. The California Consumer Legal Remedies Act ("CLRA"), Civil Code section 1750, et seq., was designed and enacted to protect consumers from unfair and deceptive business practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil Code section 1770.

58. The CLRA applies to Defendant's actions and conduct described herein because it extends to the sale of goods or services for personal, family, or household use.

59. At all relevant times, Plaintiff and members of the Class were "consumers" as that term is defined in Civil Code section 1761(d).

60. The transactions from which this action arises include transactions involving the sale or lease of goods or services for personal, family, or household purposes within the meaning of Civil Code section 1761.

61. Chipotle's practices in connection with the marketing and sale of its Food Products violate the CLRA in at least the following respects:

(a) In violation of section 1770(a)(5), Defendant knowingly misrepresented the character, ingredients, uses and benefits of the ingredients in its Food Products;

(b) In violation of section 1770(a)(7), Defendant represented that the ingredients

1 in its Food Products are of a particular standard, quality or grade, which they  
2 are not; and

3 (c) In violation of section 1770(a)(9), Defendant knowingly advertised its Food  
4 Products with the intent not to sell the products as advertised.

5  
6 62. Chipotle represents that all of its Food Products contain no genetically engineered  
7 material and omits to disclose that its Food Products necessarily contain GMO in order to convey to  
8 consumers that they are obtaining a product that provides more benefit and are safer for consumers  
9 than other restaurants which offer similar or substantially similar food products. These  
10 representations are false and misleading in that many of Chipotle's Food Products have ingredients  
11 that have or is highly likely to contain GMOs.

12  
13 63. Defendant's acts and practices, undertaken in transactions intended to result and  
14 which did result in the purchase of its Food Products by consumers, violate Civil Code  
15 section 1770 and caused harm to Plaintiff and Class members who would not have purchased (or  
16 paid as much for) its Food Products had they known the truth. The acts and practices engaged in  
17 by Defendant that violate the CLRA include inducing Plaintiff and the Class to purchase (or pay  
18 more for) its Food Products than they would otherwise have paid had they known the truth.

19  
20 64. Plaintiff was injured by purchasing (or overpaying for) Chipotle's Food Products.

21 65. In accordance with Civil Code section 1780(a), Plaintiff and members of the Class  
22 seek injunctive and equitable relief for violations of the CLRA. In addition, after mailing  
23 appropriate notice and demand in accordance with Civil Code sections 1782(a) & (d), Plaintiff will  
24 subsequently amend this Class Action Complaint to also include a request for damages. Plaintiff  
25 and members of the Class request that this Court enter such orders or judgments as may be  
26 necessary to restore to any person in interest any money which may have been acquired by means  
27  
28

1 of such unfair business practices, and for such other relief, including attorneys' fees and costs, as  
 2 provided in Civil Code section 1780 and the Prayer for Relief.

## 3 4 5 COUNT II

6 (Violation of California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq.)

7 66. Plaintiff repeats and realleges each and every allegation contained above, and  
 8 incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

9 67. Each of the above misleading advertising practices of Chipotle set forth above  
 10 constitutes untrue or misleading advertising under the California False Advertising Law ("FAL"),  
 11 California Business & Professions Code section 17500, et seq.

12 68. At all material times, Defendant's marketing materials misrepresented or omitted to  
 13 state that Defendant's Food Products contain ingredients that have GMOs. Chipotle's acts and  
 14 practices have deceived and/or are likely to deceive members of the Class and the public.

15 69. Defendant is disseminating marketing and advertising concerning its Food Products,  
 16 which by its nature is unfair, untrue, deceptive, or misleading within the meaning of California  
 17 Business & Professions Code section 17500, et seq. Such advertisements are likely to deceive, and  
 18 continue to deceive, the consumer/public.

19 70. In making and disseminating the statements alleged herein, Chipotle should have  
 20 known its advertisements were untrue and misleading. Plaintiff and members of the Class based  
 21 their decisions to purchase Chipotle Food Products in substantial part on Defendant's  
 22 misrepresentations and omitted material facts.

23 71. Plaintiff and the Class are entitled to relief, including enjoining Defendant to cease  
 24 and desist from engaging in the practices described herein.

## COUNT III

(Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.)

72. Plaintiff repeats and realleges each and every allegation contained above, and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

73. Defendant has engaged in unfair competition within the meaning of California Business & Professions Code section 17200, et seq., because Defendant's conduct is unlawful, misleading and unfair as herein alleged.

74. Chipotle's business practices are unlawful because they violate the CLRA, FDCA, and FAL.

75. Chipotle's business practices are misleading because they were likely to deceive consumers into believing that they are obtaining a product that provides more benefit and is safer to consumers than other restaurants which offer similar or substantially similar food products.

76. Defendant's business practices, and each of them, are unfair because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers, which harm greatly outweighs any benefit associated with the business practice, in that Defendant omits to disclose material information about its products and, as such, consumers are led to believe that the products they were paying for had qualities that it did not have.

77. Plaintiff has standing to pursue this claim because she has been injured by virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged herein. Plaintiff would not have purchased Chipotle's Food Products (or paid as much for it) had she known the truth.

78. Plaintiff and the Class are entitled to relief, including full restitution and/or



1 restitutionary disgorgement, to the greatest extent permitted by law, which may have been obtained  
2 by Defendant as a result of such business acts or practices, and enjoining Defendant to cease and  
3 desist from engaging in the practices described herein.

4 79. Chipotle's aforementioned actions and activities have been committed willfully with  
5 an intent to damage Plaintiff and the Class, and have caused and will continue to cause damage and  
6 irreparable harm and injury to Plaintiff and the Class unless and until such time as it is  
7 preliminarily and permanently enjoined by this Court.

8  
9 PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the Class, prays for relief as  
11 follows:

12 A. For an Order certifying this case as a class action against Chipotle and appointing  
13 Plaintiff as Representative of the Class;

14 B. Awarding declaratory and injunctive relief as permitted by law or equity to assure  
15 that the Class have an effective remedy, including enjoining Chipotle from  
16 continuing the unlawful practices as set forth above;

17 C. Awarding all costs, including experts' fees and attorneys' fees, expenses and costs  
18 of prosecuting this action; and  
19

20 D. Such other and further relief as the Court may deem just and proper.  
21

22  
23 Dated: July 22, 2019,

Respectfully Submitted,  
LAW OFFICES OF QUYEN C. HOANG

24  
25  
26  
27  
28  
\_\_\_\_\_  
Quyen C. Hoang,  
Attorney for Plaintiff Melissa Cruz