

DLA PIPER LLP (US)

Angela C. Agrusa (SBN 131337)
angela.agrusa@dlapiper.com
Shannon E. Dudic (SBN 261135)
shannon.dudic@dlapiper.com
2000 Avenue of the Stars, Suite 400 North Tower
Los Angeles, California 90067
Telephone: (310) 500-3500
Facsimile: (310) 500-3300

MESSNER REEVES LLP

Charles C. Cavanagh (SBN 198468)
ccavanagh@messner.com
1430 Wynkoop Street, Suite 300
Denver, Colorado 80202
Telephone: (303) 623-1800
Facsimile: (303) 623-0552

Attorneys for Defendant
CHIPOTLE MEXICAN GRILL, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARTIN SCHNEIDER, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC., a
Delaware corporation,

Defendant.

Case No.: 4:16-CV-02200-HSG

**STIPULATION REGARDING AUGUST
2020 AMENDMENT TO SETTLEMENT
AGREEMENT AND RELEASE [DKT.
NO. 205-2]**

Ctrm.: 2 (Oakland Courthouse)
Judge: Hon. Haywood S. Gilliam, Jr.

Action Filed: April 22, 2016
Trial Date: Vacated

1 In response to the Court's concerns at the July 30, 2020 hearing on the Motion for Final
2 Approval of Settlement filed by Plaintiffs,¹ the Parties have agreed to amend the Agreement (Dkt. No.
3 205-2) with respect to claim distribution as follows:

- 4 1. Double the Settlement Award per valid Claim from \$2.00 to \$4.00;
- 5 2. Consider the 16 untimely Claims received by the Class Action Settlement
6 Administrator, as of August 14, 2020, to be timely and valid; and
- 7 3. Consider the 328 incomplete Claims received by the Class Action Settlement
8 Administrator, as of August 14, 2020, to be timely and valid, subject to sending
9 deficiency letters and receiving cured responses from such Settlement Class Members
10 within 14 calendar days of mailing.

11 As modified, Settlement Class Members with timely and valid Claims will receive twenty
12 times what they otherwise would have recovered at trial, while at the same time contributing a sum to
13 cy pres that will indirectly benefit Settlement Class Members who did not submit Claims.

14 Assuming that all incomplete Claims are cured and all late Claims are valid, and adding these
15 Claims to the existing valid and timely Claims, the Settlement Awards to claiming Settlement Class
16 Members will total approximately **\$2,865,896.00**, leaving approximately **\$419,787.96** to cy pres.
17 These estimates account for adjusted administrative costs of sending deficiency letters, additional
18 processing, and issuing checks.² The revised distributions present an equitable result given that each
19 recipient organization will receive about \$200,000, which is substantial enough to have a meaningful
20 indirect impact for all of the class members' interests, but would be insubstantial if distributed per
21 capita.

22 The Parties agree that additional notice of the Amendment to Settlement Class Members is
23 neither warranted nor appropriate. Indeed, courts in this district and nationwide have repeatedly held
24 that, where, as here, a settlement is modified after class notice has been issued, the class need not
25

26 ¹ Capitalized terms used herein without definition shall have the meanings assigned to them in the
27 Agreement (Dkt. No. 205-2).

28 ² Any uncured claims will revert to cy pres, adding a few thousand dollars at most.

1 receive additional notice unless the modification would have a material *adverse* effect on class
2 member rights. The rationale is that a class member who did not opt out after receiving notice of the
3 original settlement would not opt out based on a modified and improved settlement. *E.g., In re*
4 *Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 330-31 (N.D. Cal. 2018) (declining to order
5 supplemental notice where, in response to court’s concerns, class settlement was modified to reduce cy
6 pres and increase payments to claiming class members); *Knuckles v. Elliott*, 2016 WL 3912816, *5-6
7 (E.D. Mich. July 20, 2016) (notice of settlement modification “required only where the amendment
8 would have a material adverse effect on the rights of class members,” and declining to order
9 supplemental notice where cy pres reduced and payments to claiming class members increased); *Klee*
10 *v. Nissan North America, Inc.*, 2015 WL 4538426, *5 (C.D. Cal. July 7, 2015) (“[W]hen a settlement
11 is amended to make it more valuable, it is unnecessary to give additional notice to those class
12 members that received adequate notice of the original proposed settlement and decided not to opt
13 out.”); *In re Prudential Ins. Co. of America Sales Practices Litig.*, 962 F. Supp. 450, 473 n.10 (D.N.J.
14 1997) (“Class members need not be informed of the Final Enhancements to the settlement because the
15 Proposed Settlement is only more valuable with these changes. Plainly, class members who declined
16 to opt out earlier, would not choose to do so now.”); *see also Shaffer v. Continental Cas. Co.*, 362 F.
17 App’x. 627, 631 (9th Cir. 2010) (“Although changes were made to the release after potential class
18 members received the notice, the changes did not render the notice inadequate because they narrowed
19 the scope of the release.”).

20 Accordingly, for the foregoing reasons and the reasons set forth in the Motion for Final
21 Approval of Settlement, the Parties respectfully request that the Court grant the Motion and finally
22 approve the Settlement, with the revised claim distribution plan set forth herein.

23
24
25 Respectfully submitted,

1 Dated: August 13, 2020

DLA PIPER LLP (US)

2 By: /s/ Angela C. Agrusa

3 Angela C. Agrusa
4 Shannon E. Dudic
5 Attorneys for Defendant

6 Dated: August 13, 2020

KAPLAN FOX & KILSHEIMER LLP

7 By: /s/ Laurence D. King

8 Laurence D. King
9 Attorneys for Plaintiffs

10 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1**

11 I, Angela C. Agrusa, attest that concurrence in the filing has been obtained from the other
12 signatory. I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct. Executed August 13, 2020 at Los Angeles, California.

14 /s/ Angela C. Agrusa
15 Angela C. Agrusa