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Attorneys for

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

**KEITH ZIMMERMAN, an
individual,**

Plaintiff,

v.

**CHIPOTLE MEXICAN GRILL,
INC., a Delaware Corporation,**

Defendant.

) Case No.: 2:16-CV-00853
)
) **COMPLAINT**
)
) **DEMAND FOR JURY TRIAL**
)
) Judge:
) Dept.:
) Trial Date:
)

COMES NOW, the plaintiff, Keith Zimmerman, (“plaintiff”) by and through his attorneys of record (as identified above the caption), asserting claims against the defendant, Chipotle Mexican Grill, Inc., a Delaware Corporation, (“defendant” or “Chipotle”), and stating and alleging as follows:

I. PARTIES

1. The plaintiff, at all times relevant to this Complaint, is and was a resident of Burbank, California. The plaintiff is thus also a citizen of the State of California for purposes of diversity jurisdiction.

2. The defendant, Chipotle Mexican Grill, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business located there. Chipotle, together with its subsidiaries (collectively the “Company”), develops and operates fast-casual, fresh Mexican food restaurants. As of June 30, 2015, the Company operated 1,847 Chipotle restaurants throughout the United States. At all times relevant to the allegations contained in this Complaint, the Company was registered to do business, and did conduct business, in the State of California. The Company manufactured and sold the food products that are the subject of this action at its restaurant location at 1263 Simi Town Center Way, Simi Valley, California 93063.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states, and because the defendant has certain minimum contacts with the State of California such that the maintenance of the suit in this District does not offend traditional notions of fair play and substantial justice.

4. Venue in the United States District Court Central District of California, Western Division, is proper pursuant to 28 USC § 1391(a)(2) because a substantial part

of the events or omissions giving rise to the plaintiff's claims and causes of action occurred in this judicial district, and because the defendant was subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

III. GENERAL ALLEGATIONS

The Norovirus Outbreak

5. In August 2015, Ventura County Environmental Health and Ventura County Public Health Division staff investigated an outbreak of Norovirus among patrons of a Chipotle restaurant located in the Simi Valley Towne Center in California. During the week of August 18, 2015, about 300 customers and 18 restaurant employees reported symptoms. Laboratory testing of patient specimens confirmed the presence of Norovirus.

Chipotle's Other Outbreaks in 2015

6. In September 2015, Minnesota Department of Health (MDH) and Minnesota Department of Agriculture (MDA) investigators reported an outbreak of *Salmonella* Newport among customers of at least 22 different Chipotle restaurants located primarily in the Twin Cities metro area, with one in St. Cloud and one in Rochester. Meal dates ranged from August 16 to August 28, 2015. Illness onset dates occurred between August 19 and September 3. There were at least 64 outbreak-associated cases. Nine persons required hospitalization. MDH and MDA have identified tomatoes as the source of the *Salmonella* Newport outbreak, and are working with state and federal partners to trace the tomatoes back to the farm of origin.

7. In or around the end of July 2015, the Chipotle restaurant located at 1415 Broadway, Seattle, Washington, which restaurant was, at all times relevant, owned and

operated by the defendant, was the source of an *E. coli* O157:H7 outbreak that sickened at least five people, including the plaintiff.

8. On December 11, 2015, public health officials in Boston reported an increased number of people deemed to be norovirus cases. The recent spike in norovirus cases was ultimately linked to the consumption of contaminated food at the Chipotle Mexican Grill in Cleveland Circle in Brighton, Massachusetts. Ultimately, the outbreak claimed at least 140 victims, many of whom were students at Boston College.

9. From mid-October through the beginning of December 2015, a total of 55 people were infected by *E. coli* O26 in multiple states as a result of consuming contaminated food at Chipotle restaurants. The majority of illnesses were reported from Washington and Oregon during October 2015. The number of ill people reported from each state was as follows: California (3), Delaware (1), Illinois (1), Kentucky (1), Maryland (1), Minnesota (2), New York (1), Ohio (3), Oregon (13), Pennsylvania (2), and Washington (27).

10. In December 2015, a second outbreak of a different, rare strain of *E. coli* O26 was identified by public health officials, who concluded that the outbreak was associated with the consumption of contaminated food at Chipotle restaurants. A total of five people infected with this strain of *E. coli* O26 were reported from three states. The number of ill people reported from each state was as follows: Kansas (1), North Dakota (1), and Oklahoma (3).

11. In recent weeks, the US District Attorney's office for the Central District of California has served Chipotle with subpoenas for information relating to the above-

described norovirus outbreak at Chipotle's Simi Valley, California restaurant that was the source of the outbreak. The criminal investigation is ongoing.

Norovirus

12. The Centers for Disease Control and Prevention (CDC) estimates that noroviruses cause nearly 21 million cases of acute gastroenteritis annually, making noroviruses the leading cause of gastroenteritis in adults in the United States. The virus attaches to the outside of cells lining the intestine, and then transfers its genetic material into those cells. Once the genetic material has been transferred, norovirus reproduces, finally killing the human cells and releasing new copies of itself that attach to more cells of the intestine's lining.

13. Humans are the only host of norovirus, and the norovirus has several mechanisms that allow it to spread quickly and easily. Infected individuals shed the virus in large numbers in their vomit and stool. Noroviruses can cause extended outbreaks because of their high infectivity, persistence in the environment, resistance to common disinfectants, and difficulty in controlling their transmission through routine sanitary measures. As a result, persons infected by norovirus from contaminated food foreseeably transmit norovirus to unsuspecting bystanders.

Symptoms, Risks and Treatment of Norovirus Infection

14. Norovirus illness usually develops 24 to 48 hours after ingestion of contaminated food or water. But transmission can also occur person-to-person and some individuals continue to shed norovirus long after they have recovered from it—in some cases up to 28 days after experiencing symptoms.

15. Symptoms typically last a relatively short amount of time, approximately 24 to 48 hours and usually include nausea, vomiting, diarrhea, and abdominal pain. Headache and low-grade fever may also accompany this illness.

16. Although symptoms usually only last one-to-two days in healthy individuals, norovirus infection can become quite serious in children, the elderly, and immune-compromised individuals. In some cases, severe dehydration, malnutrition, and even death can result from norovirus infection. And recently, there have been reports of some long-term effects associated with norovirus, including necrotizing enterocolitis, chronic diarrhea, and post-infectious irritable bowel syndrome.

17. There is no specific treatment available for norovirus. The replacement of fluids and minerals such as sodium, potassium and calcium lost due to persistent diarrhea is vital. This can be done either by drinking large amounts of liquid, or intravenously.

The Plaintiff's Illness

18. The plaintiff, an immune-compromised individual, was diagnosed with kidney disease in 2000. In December, 2011, the plaintiff received a kidney as part of the largest kidney transplant chain in the world. Appreciating his kidney for the gift that it was, the plaintiff has tried to stay as healthy as possible.

19. On August 31, 2015, the plaintiff went to visit a family friend, Stephanie, who had just had a newborn baby. At the time, the plaintiff was unaware that Stephanie had contracted a norovirus infection after eating a meal that she had purchased at Chipotle during the week prior to his visit.

20. The next day, on September 1, the plaintiff began to experience stomach pains, fever, nausea and diarrhea. After a couple of days without relief, the plaintiff became concerned about his symptoms, which were worsening. During this time he also saw his primary care doctor for a presumed upper respiratory infection.

21. On September 8, 2015, the plaintiff presented to UCLA Medical Center for an appointment with the Renal Transplant Outpatient Clinic for what was supposed to be a "routine follow-up." The plaintiff reported having suffered daily diarrhea for the past week, after being treated with Bactrim by his primary care during the previous week. He also indicated at this time that at the appointment with his primary care doctor, his serum creatinine had been elevated above his baseline as measured by recent testing.

22. The plaintiff was given a liter of intravenous normal saline in the clinic and instructed to repeat his lab test the following day. When the test was done it showed that the plaintiff's serum creatinine had not improved. The decision was made to admit him to UCLA Medical Center.

23. Upon being examined after being admitted, there was tenderness in the plaintiff's abdomen, more so on the right side. The following day, the plaintiff continued to report diarrhea (five episodes), but he had a better ability to keep food down.

24. By September 13, the plaintiff's creatinine had stabilized, but doctors decided to monitor it for another day. Doctors also discussed getting a GI consultation for the unrelenting diarrhea. The plaintiff reported four more episodes that night.

25. The next day, the plaintiff was informed that his stool had tested positive for norovirus. Doctors explained that the norovirus infection was the probable cause of

his diarrhea symptoms. Doctors approved the use of anti-diarrheals and continued IV fluid repletion.

26. The next day, the plaintiff was seen by an infectious disease doctor. The plaintiff reported abdominal cramping but felt that he was improving slightly in terms of nausea and pain. The plaintiff was prescribed Alinia 500 mg, which had been shown to have a beneficial effect on chronic norovirus in immune-compromised patients.

27. On September 16, the plaintiff reported having decreased diarrhea both in number of episodes and amount of diarrhea each time. The plaintiff's norovirus was also confirmed by PCR testing, with other enteric pathogens ruled out.

28. Ten days after the plaintiff's "follow-up" visit on September 8, he was considered well enough to be discharged home from the hospital. He had now received three days of Alinia therapy and was told to continue the therapy for four days more at home.

29. The plaintiff had various medical follow-ups and appointments following his discharge from the hospital. On October 16, after returning to UCLA, the plaintiff reported feeling recently tired, and he had decreased urine output, along with some urgency and frequency. The evaluating doctor felt that the plaintiff's gastroenteritis was related to norovirus infection and that it had resolved.

IV. CAUSES OF ACTION

Strict Liability—Count I

30. The defendant was at all times relevant to this action, the manufacturer and seller of the adulterated food product that is the subject of the action.

31. The adulterated food product that the defendant manufactured, and sold was, at the time it left the defendant's control, defective and unreasonably dangerous for its ordinary and expected use because it contained norovirus, a deadly pathogen.

32. The adulterated food product that the defendant manufactured, and sold to the plaintiff's friend Stephanie, was delivered without any change in its defective condition and the product was consumed in the manner expected and intended.

33. The plaintiff was foreseeably injured as an innocent bystander by the defendant's manufacture and sale of a defective product.

35. The plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the adulterated food product that the defendant manufactured and sold. The defendant is therefore strictly liable to the plaintiff for all such injuries and damages.

Negligence—Count III

36. The defendant owed to the plaintiff a duty to use reasonable care in the manufacture, distribution, and sale of its food product, the breach of which duty would have prevented or eliminated the risk that the defendant's food products would become contaminated with norovirus. The defendant breached this duty.

37. The defendant had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of its food product, but failed to do so, and was therefore negligent. The plaintiff is among the class of persons designed to be protected by these statutes, laws, regulations, safety codes or

provision pertaining to the manufacture, distribution, storage, and sale of similar food products.

38. The defendant had a duty to properly supervise, train, and monitor its respective employees, and to ensure their compliance with all applicable statutes, laws, regulations, or safety codes pertaining to the manufacture, distribution, storage, and sale of similar food products, but it failed to do so, and was therefore negligent.

39. The defendant had a duty to use ingredients, supplies, and other constituent materials that were reasonably safe, wholesome, free of defects, and that otherwise complied with applicable federal, state, and local laws, ordinances and regulations, and that were clean, free from adulteration, and safe for human consumption, but it failed to do so, and was therefore negligent.

40. As a direct and proximate result of the defendant's acts of negligence, the plaintiff sustained injuries and damages in an amount to be determined at trial.

Negligence Per Se—Count IV

41. The defendant had a duty to comply with all applicable state and federal regulations intended to ensure the purity and safety of its food product, including the requirements of the Federal Food, Drug and Cosmetics Act (21 U.S.C. § 301 *et seq.*) as well as the California adulterated food statutes, including but not limited to, California Health & Safety Code Section 110545.

42. The food product that the defendant imported, manufactured, distributed and/or sold, was “adulterated” within the meaning of the federal Food, Drug and Cosmetic Act, and the California adulterated food statutes, including but not limited to,

California Health & Safety Code Section 110545, because it contained a deleterious substance that rendered it injurious to health; it consisted in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or was otherwise unfit for food; and/or it had been produced, prepared, packaged or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health.

43. The defendant violated federal and state food safety regulations by its import, manufacture, distribution, and sale of the adulterated food product.

44. The federal and state food safety regulations applicable here, and as set forth above, establish a positive and definite standard of care in the import, manufacture, distribution, and sale of food, and the violation of these regulations constitutes negligence per se.

45. The plaintiff was in the class of persons intended to be protected by these statutes and regulations, and were injured as the direct and proximate result of the defendant's violation of applicable federal and state food safety regulations.

46. The plaintiff sustained injury and damages in an amount to be determined at trial.

V. DAMAGES

47. The plaintiff has suffered general, special, incidental, and consequential damages as the direct and proximate result of the acts and omissions of the defendant, in an amount that shall be fully proven at the time of trial. These damages include, but are not limited to: damages for general pain and suffering; damages for loss of enjoyment of

life, both past and future; medical and medical related expenses, both past and future; travel and travel-related expenses, past and future; emotional distress, past and future; pharmaceutical expenses, past and future; and all other ordinary, incidental, or consequential damages that would or could be reasonably anticipated to arise under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for judgment against defendant as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by the plaintiff as a result of the defendant's conduct;
- B. Ordering statutory prejudgment interest;
- C. Awarding the plaintiff reasonable attorneys' fees and costs, to the fullest extent allowed by law; and
- D. Granting all such additional and/or further relief as this Court deems just and equitable.

Dated: February 8, 2016

Respectfully submitted,

QUIRK LAW FIRM, LLP


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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
KEITH ZIMMERMAN

DEFENDANTS
CHIPOTLE MEXICAN GRILL, INC., a Delaware Corporation

(b) County of Residence of First Listed Plaintiff Los Angeles, California
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
see attachment

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
21 USC § 342(a)

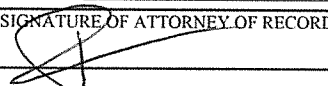
Brief description of cause:
Norovirus infection from contaminated ready-to-eat product

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 02/08/2015 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CIVIL COVER SHEET ATTACHMENT

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