

1 Laurence D. King (SBN 206423)  
Linda M. Fong (SBN 124232)  
2 Matthew B. George (SBN 239322)  
Mario M. Choi (SBN 243409)  
3 **KAPLAN FOX & KILSHEIMER LLP**  
350 Sansome Street, Suite 400  
4 San Francisco, CA 94104  
Telephone: 415-772-4700  
5 Facsimile: 415-772-4707  
Email: lking@kaplanfox.com  
6 lfong@kaplanfox.com  
mgeorge@kaplanfox.com  
7 mchoi@kaplanfox.com

8 Frederic S. Fox (*pro hac vice*)  
Donald R. Hall (*pro hac vice*)  
9 **KAPLAN FOX & KILSHEIMER LLP**  
850 Third Avenue, 14<sup>th</sup> Floor  
10 New York, NY 10022  
Telephone: 212-687-1980  
11 Facsimile: 212-687-7714

12 *Attorneys for Plaintiffs*

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

15 COLLEEN GALLAGHER, MARTIN  
SCHNEIDER, SARAH DEIGERT, LAURIE  
16 REESE, THERESA GAMAGE, TIFFANIE  
ZANGWILL, and NADIA PARIKKA,  
17 Individually and on Behalf of All Others  
Similarly Situated,

18 Plaintiffs,

19 v.

20 CHIPOTLE MEXICAN GRILL, INC., a  
21 Delaware Corporation,

22 Defendant.

Case No. 3:15-cv-03952-HSG

**CLASS ACTION**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATION OF:**

1. California Consumer Protection Laws;
2. Maryland Consumer Protection Act;
3. Florida Deceptive and Unfair Trade Practices Act;
4. New York Consumer Protection Laws;
5. Unjust Enrichment;
6. Misrepresentation; and
7. Declaratory Judgment

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Colleen Gallagher, Martin Schneider, Sarah Deigert, Laurie Reese, Theresa  
2 Gamage, Tiffanie Zangwill, and Nadia Parikka (“Plaintiffs”), by and through their attorneys,  
3 individually and on behalf of all others similarly situated, bring this First Amended Class Action  
4 Complaint (“Complaint”) against Defendant Chipotle Mexican Grill, Inc., a Delaware corporation  
5 (“Chipotle” or “Defendant”), and make the following allegations based upon knowledge as to  
6 themselves and their own acts, and upon information and belief as to all other matters, as follows:

7 **INTRODUCTION**

8 1. On April 27, 2015, Chipotle began its highly successful “G-M-Over It” publicity blitz,  
9 misrepresenting to consumers that it was giving “a farewell to GMOs” to become the first fast food  
10 chain in the United States with a GMO free menu that uses “only non-GMO ingredients.”



22 2. But Chipotle’s “non-GMO” advertising and labeling is misleading and deceptive to  
23 consumers, who reasonably understand today that such claims would mean that Chipotle’s menu is  
24 100% free of GMOs and that Chipotle does not serve food sourced from animals that have been  
25 raised on GMOs or genetically engineered feed. In fact, Chipotle (1) serves protein products such  
26 as beef, chicken, and pork from poultry and livestock that have been raised on GMO feed; (2) serves  
27 dairy products such as cheese and sour cream derived from cows raised on GMO feed; and (3) sells  
28 beverages such as Coca-Cola and Sprite that are loaded with corn-syrup derived from GMO corn.

1 Moreover, Chipotle does not disclose any of this information to consumers in its restaurants or on its  
2 menus. Accordingly, Chipotle's GMO free image and non-GMO advertising and labeling is  
3 misleading and highly deceptive to reasonable consumers.

4 3. Plaintiffs bring this class action alleging that Chipotle's conduct, as described more  
5 fully herein, violates California, Maryland, Florida, and New York consumer protection laws, and  
6 they assert various common law tort claims. Plaintiffs seek damages, restitution and/or disgorgement  
7 of Chipotle's profits, injunctive and declaratory relief on behalf of themselves and similarly situated  
8 consumers.

### 9 **PARTIES**

10 4. Plaintiff Colleen Gallagher is a resident of Piedmont, California.

11 5. Plaintiff Martin Schneider is a resident of Valley Village, California.

12 6. Plaintiff Sarah Deigert is a resident of San Francisco, California.

13 7. Plaintiff Laurie Reese is a resident of Whittier, California.

14 8. Plaintiff Theresa Gamage is a resident of Rockville, Maryland.

15 9. Plaintiff Tiffanie Zangwill is a resident of Melbourne, Florida.

16 10. Plaintiff Nadia Parikka is a resident of Ardsley, New York.

17 11. Defendant Chipotle Mexican Grill, Inc., is a Delaware corporation headquartered in  
18 Denver, Colorado. Founded in 1993, Chipotle develops and operates fast-casual and fresh Mexican  
19 food restaurants. As of December 31, 2014, Chipotle has over 1,780 restaurants throughout the  
20 United States, with approximately 325 restaurants in California, 68 restaurants in Maryland, 99  
21 restaurants in Florida, and 103 in New York. Chipotle has reported revenues of \$1.07 billion.

### 22 **JURISDICTION AND VENUE**

23 12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
24 § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy  
25 exceeds \$5,000,000, exclusive of interest and costs, and is a class action in which some members of  
26 the Class are citizens of different states than Chipotle. *See* 28 U.S.C. § 1332(d)(2)(A). This Court  
27 has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

1           13. This Court has personal jurisdiction over Chipotle because it is authorized to do  
2 business and does conduct business in California, has specifically marketed, advertised, and made  
3 substantial sales in California, and has sufficient minimum contacts with this state and/or sufficiently  
4 avails itself of the markets of this state through its promotion, sales, and marketing within this state  
5 to render the exercise of jurisdiction by this Court permissible.

6           14. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because Chipotle does  
7 substantial business in this District, has intentionally availed itself of the laws and markets within  
8 this District through its promotion, marketing, distribution and sales activities in this District, and a  
9 significant portion of the facts and circumstances giving rise to Plaintiffs' Amended Complaint  
10 occurred in or emanated from this District.

11           15. Pursuant to Civil Local Rule 3-2(c), an intra-district assignment to the San  
12 Francisco/Oakland Division is appropriate because a substantial part of the events or omissions  
13 which give rise to the claims asserted herein occurred in this Division, including that Plaintiff  
14 Gallagher patronized a Chipotle restaurant in Alameda County and Plaintiff Deigert patronized a  
15 Chipotle restaurant in San Francisco County.

### FACTUAL ALLEGATIONS

#### **A. Chipotle Markets Its Mexican Fast Food As Healthy Lifestyle Brand**

16           16. Chipotle owns and operates a nationwide chain of casual Mexican fast-food  
17 restaurants that has a fairly limited menu of tacos and burritos served on flour or corn tortillas, burrito  
18 bowls (a burrito without the tortilla), and salads. *See* Exhibit 1. Chipotle's menu items can be filled  
19 with a selection of proteins such as chicken, steak, beef ("barbacoa"), pork ("carnitas") or vegetables  
20 and tofu ("sofritas"). Customers can then select from a cafeteria style selection of toppings or  
21 condiments such as cheese, sour cream, salsa, guacamole, rice and beans. Chipotle also serves corn  
22 tortilla chips as well as a selection of soft-drinks like Coca-Cola, Diet Coke, Pibb Ultra and Sprite.  
23 Some Chipotle stores have alcoholic beverages such as beer and margaritas.

24           17. Since 2009, Chipotle has marketed itself as serving "Food With Integrity," and sets  
25 itself apart from other fast-food chain competitors by claiming to serve locally-sourced produce,  
26 antibiotic and hormone free livestock raised in humane conditions, and produce farmed using  
27  
28

1 environmentally-friendly techniques. Chipotle claims that it is “all about simple, fresh food without  
2 artificial flavors or fillers,” that it serves “more local produce than any restaurant company in the  
3 U.S.,” that it is “serious about pasture-raised animals that have room to be animals,” and that there  
4 is “no place for nontherapeutic antibiotics and synthetic hormones on the farms that produce”  
5 Chipotle’s ingredients. Chipotle claims that “[w]ith every burrito we roll or bowl we fill, we’re  
6 working to cultivate a better world.”

7 18. In addition to print, outdoor, transit and radio ads, Chipotle engages in special  
8 promotions to demonstrate its “Food With Integrity” mission. Chipotle’s video and music programs,  
9 events and festivals such as its “Cultivate Festival,” and digital, mobile, and social media campaigns  
10 (such as its three-minute “The Scarecrow” and two-minute “Back to the Start” Youtube.com  
11 campaigns) have permitted Chipotle to differentiate itself from other fast-food companies as its fast  
12 food industry leader in being health and environmentally conscious. In 2014 alone, Chipotle spent  
13 over \$57 million in advertising and marketing costs in the United States to promote its Food With  
14 Integrity brand.

15 19. 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. In addition to capitalizing on market trends that fetch high sales and premium prices for  
18 local produce and ethically raised animals, in 2013 Chipotle turned its attention to the growing  
19 business trend of “non-GMO” and “GMO free” marketing and labeling.

20 **B. Consumers’ Understanding of Non-GMO and GMO Free Claims**

21 20. While the abbreviated term “GMO” may generally refer to genetically modified  
22 organisms, when used in food marketing and labeling, terms like “non-GMO” and “GMO free”  
23 (which are reasonably understood by consumers to be synonymous) have a broader meaning to  
24 consumers in that they convey food products do not contain and are not sourced or derived from  
25 genetically engineered foods and methods, such as genetically engineered corn that ends up in corn  
26 syrup and beef from a cow that was raised on a diet of genetically engineered or modified food.  
27 Consumers have this understanding because of educational efforts by “non-GMO” consumer  
28 information sources and certification agencies as well as government authorities. The successful

1 results of their efforts to develop a consumer understanding of “non-GMO” and related terms in this  
2 manner are demonstrated by market research surveys as discussed below.

3 21. For example, consumers have been educated by the Non-GMO Project  
4 ([www.nongmoproject.org](http://www.nongmoproject.org)), which is North America’s “only third party verification and labeling for  
5 non-GMO food and products.” It was formed in the early 2000s after GMO use grew with the goal  
6 of “creating a standardized meaning of non-GMO for the North American food industry.” Because  
7 of the Non-GMO Project’s work with companies and food producers, through its Independent  
8 Verification Program, its Non-GMO Project Verified seal is now found on over 34,700 plant and  
9 animal food products and with 2,200 participating brands. Further, it makes significant educational  
10 outreach efforts through its Non-GMO Project and LivingNonGMO.org websites that get over 200  
11 million visits a year, so consumers readily and understandably associate “non-GMO” marketing and  
12 similar terms with definitions set by the Non-GMO Project.

13 22. Accordingly, consumers understand that any product or ingredient that is  
14 contaminated by or with GMOs is not “non-GMO.” And, the Non-GMO Project specifically extends  
15 its definition of “Non-GMO or No-GM” to any “plant, animal, or other organism whose genetic  
16 structure has not been altered by gene splicing” *and* to “a process or product that does not employ  
17 GM processes or inputs.”<sup>1</sup> Per the consumers’ leading industry source, the Non-GMO Project states  
18 that “animal feed commonly contains High-Risk Inputs” in the form of genetically modified or  
19 engineered feed. As a result, animal food products (such as meat, poultry, and dairy) are included  
20 on the Non-GMO Project’s list of High-Risk ingredients. In order for animal products to be properly  
21 labeled as “non-GMO” the products must meet a number of stringent requirements, including that  
22 the animals and poultry be fed seed that is less than 5% GMO for various periods of the animal’s life  
23 (including the entire life for meat animals other than poultry). Other GMO awareness campaigns  
24 similarly advise consumers that in order to avoid GMOs they should avoid “meat, eggs, and dairy  
25 products that have eaten GMO feed” furthering the consumer understanding that “non-GMO” and  
26

---

27 <sup>1</sup> See <http://www.nongmoproject.org/wp-content/uploads/Non-GMO-Project-Standard.pdf>, page 24  
28 (last accessed March 11, 2016).

1 related marketing, labeling and advertising claims indicate to consumers that the animal products  
2 were not raised on genetically modified feed.<sup>2</sup>

3 23. The federal government has also taken steps to adopt standards that assist companies  
4 and consumers with understanding that “non-GMO” labeling means animal products are not raised  
5 on GMO derived feed. For example, in mid-2013, the Food Safety and Inspection Service, the  
6 division of the U.S. Department of Agriculture charged with regulating the safety and proper labeling  
7 of meat, poultry, and egg products, approved the Non-GMO Project Verified label claim for meat  
8 and liquid egg products.<sup>3</sup> The government’s efforts are intended to inform consumers that the animal  
9 was *not* raised on a diet that consists of genetically engineered ingredients, like corn, soy and  
10 alfalfa. Accordingly, consumers understandably associate advertising or labeling with the terms  
11 “non-GMO” or “GMO free” with products whose ingredients have not been tainted by GMOs or  
12 sourced from animals fed with GMOs.

13 24. More recently, in November 2015, the FDA issued guidelines on the labeling of foods  
14 derived from genetically engineered plants and grouped the terms “*GMO free*,” “*GE free*,” “*does not*  
15 *contain GMOs*,” “*non-GMO*” and similar claims” (original emphasis) together.<sup>4</sup> The FDA warned  
16 that the term “free” that is associated with these similar claims “conveys zero or total absence” of  
17 ingredients derived through biotechnology and that these type of claims are “problematic” due to the  
18 challenges of substantiating such claims. The FDA emphasized that its purpose in issuing its recent  
19 guidelines was so that companies’ labeling on food derived from genetically engineered plants “be  
20 truthful and not misleading” to consumers. Moreover, the FDA took care to appropriately group  
21 these commonly used “non-GMO” related labeling terms in the same fashion consumers do,  
22 demonstrating that “non-GMO,” “does not contain GMOs” and “GMO free” have an identical and  
23 synonymous meaning to consumers. The FDA also points out that the while the “O” in the acronym

24 \_\_\_\_\_  
25 <sup>2</sup> See <https://gmo-awareness.com/avoid-list/overview/> (last accessed March 11, 2016);  
<http://nongmoorganicrestaurants.com/gmo-ingredients> (last accessed March 11, 2016).

26 <sup>3</sup> See <http://www.foodliabilitylaw.com/2013/07/articles/legislation-and-regulation/food-labeling/usda-approves-non-gmo-label-claim-for-meat-and-egg-products/>, last accessed March 4,  
27 2016.

28 <sup>4</sup> See <http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/ucm059098.htm#references> (last accessed March 11, 2016).

1 GMO generally refers to the word “organism” because an entire organism is generally not contained  
2 in a food (microorganisms in the dairy product yogurt being a cited exception), GMO is generally  
3 “read as meaning that the food was not *derived from* a genetically modified organism, such as a plant  
4 that has been genetically engineered” (original emphasis).

5 25. Market research also supports the fact that consumers understand and expect that  
6 advertisements and labeling of “non-GMO,” “GMO free,” or related claims have similar meanings  
7 and would not apply to foods sourced from animals fed with a GMO or genetically engineered diet.  
8 For example, a poll of Ohio voters by Public Policy Polling in December 2015 indicated that 76% of  
9 consumers would “[e]xpect that a dairy product labeled as “non-GMO” was made using milk from  
10 cows that had not been fed any genetically modified feed.”<sup>5</sup> Only 11% of respondents would *not*  
11 expect such a product to come from cows fed only with non-GMO feed.

12 26. Recently, a consumer research survey firm conducted a market survey of 1,003  
13 consumers nationwide on behalf of Plaintiffs that confirms reasonable consumers would also expect  
14 and understand that a restaurant claiming its food did not contain GMOs would not serve food from  
15 animals fed with GMOs:

QUESTION	YES	NO
If a restaurant states that it sells food that does not contain GMOs, would you expect the restaurant to serve food from animals that ate feed containing GMOs?	23%	77%
If a restaurant states that it serves food that does not contain GMOs, and it does serve food from animals that ate feed containing GMOs, would you say that the restaurant was misleading the public?	78%	22%

16  
17  
18  
19  
20  
21  
22  
23  
24  
25 When respondents were limited to California consumers, the results were approximately the same.

26  
27 <sup>5</sup>See [https://www.scribd.com/fullscreen/296829933?access\\_key=key-  
28 CZjpQ4qu9Q6VZ6AYOQvf&allow\\_share=false&escape=false&show\\_recommendations=false&  
view\\_mode=scroll](https://www.scribd.com/fullscreen/296829933?access_key=key-CZjpQ4qu9Q6VZ6AYOQvf&allow_share=false&escape=false&show_recommendations=false&view_mode=scroll) (last accessed March 11, 2016).



1           27.     Accordingly, consumers reasonably understand food advertised or labeled as “non-  
2     GMO,” “GMO free,” “does not contain GMOs,” or other similar claims only apply to food that  
3     (1) does not contain GMOs and is not sourced from, or derived from any GMOs; and (2) does not  
4     contain animal products such as meat, poultry, pork and dairy that have a diet of GMO feed, GMO  
5     contaminated feed and/or genetically modified or engineered feed. Consumers also understand that  
6     the term “food” applies broadly to food *and* drink, which is also how the FDA defines it. 21 U.S.C.  
7     § 321(f)(1).

8           **C.     Consumers Have a Negative, Unhealthy Perception of GMOs**

9           28.     Today, genetically modified crops are used in biological and medical research,  
10     production of pharmaceutical drugs, experimental medicine, and agriculture. Such crops are  
11     engineered to, among other things, resist certain pests, diseases, or environmental conditions, reduce  
12     spoilage, increase size and yield, taste and look better, and resist chemical treatments. In the United  
13     States, as of 2015, 94% of the planted area of soybeans, 95% of cotton, and 92% of corn were  
14     genetically modified varieties.<sup>6</sup>

15           29.     Since 1996, farmers in animal agriculture (including poultry) have optimized GMOs  
16     by feeding genetically modified grains (corn) and oilseeds (soybean) to their flocks and herds.<sup>7</sup>  
17     Because more than 80% of the corn and soybeans in the United States are raised from genetically  
18     modified seeds, almost all corn and soybean used in conventional livestock and poultry feed is  
19     genetically modified. In addition, other genetically modified crops such as cotton, canola, sugar  
20     beets, and alfalfa are commonly used in animal feed.<sup>8</sup> Consequently, most meat and dairy products  
21     are contaminated with GMOs due to the feed consumed by livestock and poultry and cannot be  
22     labeled as “non-GMO” without deceiving consumers. Because the safety or health impact of food

23           <sup>6</sup> *Adoption of Genetically Engineered Crops in the U.S.*, United States Department of Agriculture  
24     Economic Research Service (July 9, 2015), <http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx>.

25           <sup>7</sup> *See Genetically Modified Organism (GMO) Use in the Chicken Industry*, National Chicken  
26     Council (July 5, 2013), <http://www.nationalchickencouncil.org/genetically-modified-organism-gmo-use-in-the-chicken-industry/>.

27           <sup>8</sup> *See Ryan Beville, How Pervasive are GMOs in Animal Feed?*, GMO Inside Blog (July 16, 2013),  
28     <http://gmoinside.org/gmos-in-animal-feed/>.

1 and other goods derived from genetically modified crops has been and continues to be hotly debated,<sup>9</sup>  
2 it is no surprise that according to a January 29, 2015 Pew Research Center survey, only 37% of the  
3 general public believes that “it is generally safe to eat genetically modified (GM) foods.”<sup>10</sup>

4 30. While the potential environmental and health impact of GMOs has been the subject  
5 of much scrutiny and debate within the food and science industries, Chipotle and other businesses  
6 know customers attach an unhealthy, negative perception towards them. Chipotle itself has also  
7 fostered consumers’ negative perception of GMOs and GMO derived foods by claiming that  
8 “[e]vidence suggests that GMOs engineered to produce pesticides or withstand powerful chemical  
9 herbicides damage beneficial insect populations and create herbicide resistant super-weeds.”  
10 Chipotle also claims GMO crops are “fueling an escalating chemical arms race with weeds and  
11 insects.” Accordingly, Chipotle advocates that consumers should not support the widespread use of  
12 feeding chickens, pigs, and cows with GMO crops that are causing such alleged harm to the  
13 environment. Chipotle’s claims (whether founded in fact or not) are specifically intended to  
14 manipulate consumers into avoiding GMOs, including animal food products raised on GMO feed,  
15 because of health and environmental concerns.

16 31. As a result of GMO controversy and consumer concerns, companies have created a  
17 \$11 billion (and fast growing) market for non-GMO products and consumers are willing to pay the  
18 higher costs associated with non-GMO products due to the negative perception of genetically  
19 modified foods and because GMO-free ingredients are often more expensive.<sup>11</sup> And, there is no  
20 dispute that GMO labeling is a material and important issue to consumers. In a November 2015 poll,  
21

---

22 <sup>9</sup> Compare, e.g., European Commission, *A Decade of EU-funded GMO Research (2001-2010)*,  
23 [http://ec.europa.eu/research/biosociety/pdf/a\\_decade\\_of\\_eu-funded\\_gmo\\_research.pdf](http://ec.europa.eu/research/biosociety/pdf/a_decade_of_eu-funded_gmo_research.pdf) (last  
24 accessed Mar. 11, 2016), with *GMO Facts*, Non GMO Project,  
25 <http://www.nongmoproject.org/learn-more/> (last accessed Mar. 11, 2016) (“Meanwhile, a growing  
26 body of evidence connects GMOs with health problems, environmental damage and violation of  
27 farmers’ and consumers’ rights.”).

28 <sup>10</sup> Cary Funk and Lee Rainie, *Public and Scientists’ Views on Science and Society*, Pew Research  
Center (Jan. 29, 2015),  
[http://www.pewinternet.org/files/2015/01/PI\\_ScienceandSociety\\_Report\\_012915.pdf](http://www.pewinternet.org/files/2015/01/PI_ScienceandSociety_Report_012915.pdf).

<sup>11</sup> Mary Beth Schweigert, *GMO Free Comes at a Price*, *Gluten-Free Living* (Nov. 25, 2014),  
<http://www.glutenfreeliving.com/gluten-free-lifestyle/non-gmo/gmo-free-comes-at-price/>;

1 89% of likely voters in 2016 would support labeling of GMO foods.<sup>12</sup> And, 77% percent of those  
2 “strongly favored” such a requirement. Polls consistently show that Americans want to know if the  
3 food they are purchasing are non-GMO.<sup>13</sup>

4 **D. Chipotle’s April 2015 ‘G-M-Over It’ Announcement and Non-GMO Claims**

5 32. In April 2015, Chipotle seized upon the anti-GMO zeitgeist and took the  
6 unprecedented step among fast-food restaurants by launching a multi-media publicity and advertising  
7 campaign touting that it was the “first national company” in the restaurant industry to serve a menu  
8 devoid of GMOs and GMO derived foods. The announcement was a culmination of two years of  
9 Chipotle’s declared attention and focus at supposedly ridding its restaurants of GMOs. Chipotle  
10 titled its press release “Chipotle Becomes the First National Restaurant Company to Use Only Non-  
11 GMO Ingredients.” Chipotle led its press release with the proclamation that it “achieved its goal of  
12 moving to only non-GMO ingredients to make all of the food in its U.S. restaurants.” Among other  
13 things, Chipotle claimed its suppliers specially planted “non-GMO corn varieties” to meet its  
14 demands and that GMO ingredients in its products had been replaced with “non-GMO alternatives.”  
15 Chipotle declared to the American public that it was “G-M-Over It.”

16 33. As intended, Chipotle’s announcement garnered widespread coverage in national and  
17 local media throughout the United States, which was unsurprising given consumer interest in GMOs  
18 and Chipotle’s rapid growth and popularity. Chipotle’s announcement was covered by the national  
19 news media, both in print and on television. Notably, many of the articles and reports contained  
20 headlines or phrasing confirming the synonymous nature of the terms “non-GMO” and “GMO free”:

- 21 ➤ “Chipotle Goes GMO Free”
  - 22 ➤ “Chipotle Says its Finished the Process of Going GMO Free”
  - 23 ➤ “Chipotle Declares Its Menu Items GMO Free”
- 24

25 \_\_\_\_\_  
26 <sup>12</sup>See The Mellman Group, Inc., “Voters Want GMO Food Labels Printed On Packaging,”  
<http://4bgr3aepis44c9bxt1ulxsyq.wpengine.netdna-cdn.com/wp-content/uploads/2015/12/15memn20-JLI-d6.pdf> (last accessed Mar.11, 2016).

27 <sup>13</sup> See The Mellman Group, Inc., “Voters Want GMO Food Labels Printed On Packaging,”  
28 <http://4bgr3aepis44c9bxt1ulxsyq.wpengine.netdna-cdn.com/wp-content/uploads/2015/12/15memn20-JLI-d6.pdf> (last accessed Mar. 11, 2016).

1 This amount of media coverage would likely have reached millions, if not tens of millions, of  
2 consumers throughout the United States.

3 34. Since its announcement, Chipotle has engaged in a multi-media mass marketing and  
4 advertising campaign to inform consumers that it was going “non-GMO” through methods including  
5 billboards, social media, store fronts, and in-store signage.

6 35. On Twitter, Chipotle announced to its 684,000 followers on Twitter that: “We’re now  
7 making all of the food at our US restaurants with only non-GMO ingredients[.]”<sup>14</sup> In another tweet,  
8 Chipotle noted that it was “literally dropping” the letters G, M, and O from their menu, including  
9 taking out the “O” in “Chicken Burrito,” thus representing that its chicken burrito is non-GMO and  
10 GMO free:



23 36. In Chipotle’s “A Farewell to GMOs” billboard advertisement of a corn hard-shell taco  
24 laced with cheese, it represented that it replaced all of its ingredients “with non-GMO ingredients”  
25 and that “all” of Chipotle’s “food is non-GMO”:  
26

27 <sup>14</sup> See @ChipotleTweets, Chipotle,  
28 <https://twitter.com/ChipotleTweets/status/592793417652039680> (last accessed Aug. 10, 2015).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## A FAREWELL TO GMOs

For the last 21 years we have been striving to make our ingredients better. Given that we don't think genetically modified organisms (GMOs) are better, we have replaced them with non-GMO ingredients. Now all of our food is non-GMO.

[CHIPOTLE.COM/GMO](http://CHIPOTLE.COM/GMO)



37. In another advertisement, Chipotle represented that its food is “made with no-GMO ingredients”:



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



39. Indeed, inside Chipotle restaurants consumers are presented with a large, colorful billboard mounted behind the store cashiers, which states among things: “ONLY NON-GMO INGREDIENTS.” The in-store sign contains, directly above Chipotle’s representation, pictures of the “Ingredients,” including lettuce, lemons, limes, onions, tomatoes alongside raw pieces of beef and cheese. The photographs of cheese and meat placed just above “ONLY NON-GMO INGREDIENTS” are meant to be, and are, interpreted by consumers as a claim that all the ingredients pictured on the in-store board and in the restaurant are non-GMO or GMO free. Moreover, when read in conjunction with the other statements on the billboard and its placement next to the menu, Chipotle is representing to consumers that all of its ingredients, including its meat “raised without antibiotics or added hormones” and its “pasture-raised dairy” products, are non-GMO or GMO free:

///

///

///

///

///

///

///





40. Chipotle’s strategic announcement that it would only prepare food with ingredients that are free of GMOs was intended to further its “Food With Integrity” and healthy lifestyle image, while differentiating it from its fast food competitors or other Mexican restaurants. Its move to becoming “non-GMO” was a strategic marketing campaign to entice new health-minded consumers and retain current ones.

41. Chipotle’s announcements, statements, advertising and marketing claims, including but not limited to those set forth in this Amended Complaint that its food is made with “only non-GMO ingredients,” that “all of our food is non-GMO,” that it is “G-M-Over it,” that it made a “Farewell to GMOs,” and that “Chipotle: Made With No-GMO Ingredients” are collectively referred to as Chipotle’s “Non-GMO Claims.” Chipotle’s nationwide campaign supporting its Non-GMO Claims for its restaurants has been extensive and comprehensive throughout the Class Period. Chipotle has spent substantial time, money, and effort conveying to consumers throughout the United States its Non-GMO Claims. Chipotle’s Non-GMO Claims have been a resounding success for the

1 company, which saw a 100+ point jump in its stock price on the New York Stock Exchange in the  
2 four months after its public announcement.

3 **E. Chipotle’s False, Misleading and Deceptive Non-GMO Claims**

4 42. But as Chipotle told consumers it was “G-M-Over it,” the opposite was true. In fact,  
5 Chipotle’s Non-GMO claims are deceptive and misleading to reasonable consumers because: (1)  
6 Chipotle serves protein products such as beef, chicken, and pork from poultry and livestock that is  
7 deceptively advertised and labeled as “non-GMO” because the animals have been raised on GMO  
8 feed; (2) Chipotle serves dairy products such as cheese and sour cream that is deceptively advertised  
9 and labeled as “non-GMO” because they have been derived from cows raised on GMO feed; and (3)  
10 Chipotle serves beverages such as Coca-Cola and Sprite that are loaded with corn-syrup – a GMO.  
11 Moreover, Chipotle does not disclose any of this information to consumers in its restaurants or on its  
12 menus.

13 43. Chipotle’s Meat and Dairy Is Not Non-GMO: As set forth above, consumers  
14 associate the similar terms “non-GMO,” “GMO free,” and similar representations, to apply only to  
15 meat and dairy products that do not come from animals fed with genetically engineered or GMO  
16 derived feed. Chipotle deceptively advertises, labels, and markets its entire menu as “Non-GMO”  
17 or “GMO free” even though its chicken, beef, and pork (“Meat Products), as well as its sour cream,  
18 and cheese (“Dairy Products”) are all sourced from animals that are fed with a genetically engineered  
19 or GMO derived feed. Accordingly, Chipotle’s Non-GMO Claims about its Meat and Dairy Products  
20 are deceptive and misleading to reasonable consumers. Plaintiffs also allege that Chipotle’s Meat  
21 Products are substantially similar to each other and that Chipotle’s Dairy Products are substantially  
22 similar because each product within its respective group contains similar characteristics and purposes  
23 on Chipotle’s menu as filling for one of its main menu items such as a burrito or taco, and because  
24 each product carries the same deceptive and misleading representations and omissions alleged herein.

25 44. Chipotle’s Soft Drinks Actually Contain GMOs and Are Not Non-GMO: Chipotle’s  
26 Non-GMO Claims about its restaurants extend to the beverages it offers on its menu. Chipotle serves  
27 a variety of soft drinks, such as Coca-Cola, Diet Coke, Fanta Orange, Barq’s Root Beer, Pibb Ultra,  
28 Minute Maid Lemonade, PowerAde, and Sprite (collectively “Soft Drinks”) that contain GMOs in



1 the form of high-fructose corn syrup or aspartame (which is manufactured with GMOs). Moreover,  
2 reasonable consumers are likely to be deceived by Chipotle's Non-GMO Claims because they make  
3 no attempt to differentiate or distinguish its Soft Drinks from other menu items and the FDA defines  
4 "food" to broadly encompass both food *and* drink. Accordingly, Chipotle's Non-GMO Claims about  
5 its Soft Drinks are deceptive and misleading to reasonable consumers. Plaintiffs allege that all of  
6 Chipotle's Soft Drinks are substantially similar products because they have similar qualities,  
7 characteristics, ingredients, the same manufacturer (Coca-Cola), are intended to be served along with  
8 Chipotle's other menu items, and because each product carries the same deceptive and misleading  
9 representations and omissions alleged herein.

10 45. Some food bloggers and commentators have also pointed out Chipotle's misleading  
11 and deceptive conduct with regard to its Non-GMO Claims. As food writer Julie Kelly points out,  
12 "[t]he company's holier-than-thou PR move proclaiming 'Food with Integrity' struck me as the  
13 ultimate cynical marketing tactic: feign integrity while you mislead customers to believe that your  
14 food is GMO-free when it's not."<sup>15</sup> Noting that "Chipotle's advertising is purposefully misleading,"  
15 the *National Review* article, "GMO: Gimmicky Marketing Obfuscations" pointed out the following:

16 So you can eat GM-free at Chipotle as long as you don't order the pork, chicken,  
17 cheese, sour cream, tortillas, or Coke. "They conveniently ignore GMO-derived  
18 ingredients when they don't have alternatives or it doesn't serve profits," said Kevin  
19 Folta, chair of the Horticultural Sciences Department at the University of Florida. "It  
20 is corporate deception in the name of a buck and anti-GMO deception in the name of  
21 ideology." So much for food with integrity.<sup>16</sup>

22 46. Moreover, Chipotle has taken no meaningful steps to clarify consumer  
23 misconceptions about its Non-GMO Claims that it promulgated through the mass media, social  
24

---

25 <sup>15</sup> Julie Kelly, *Why Whole Foods and Chipotle's anti-GMO campaigning has lost my business*,  
26 Genetic Literacy Project (July 6, 2015), <http://www.geneticliteracyproject.org/2015/07/06/why-whole-foods-and-chipotles-anti-gmo-campaigning-has-lost-my-business/>; see also Sarah Zhang,  
27 *Chipotle's Anti-GMO Stance Is Some Anti-Science Pandering Bull[]*, Gizmodo (Apr. 27, 2015,  
28 3:18 PM), <http://gizmodo.com/chipotles-anti-gmo-stance-is-some-pandering-bullshit-1700437048>.

<sup>16</sup> Julie Kelly and Jeff Stier, *GMO: Gimmicky Marketing Obfuscations; Perhaps Chipotle should have learned from Starbucks*, *National Review* (May 1, 2015, 5:30 PM), <http://www.nationalreview.com/article/417801/gmo-gimmicky-marketing-obfuscations-julie-kelly-jeff-stier>; see also Tim McDonnell, *Chipotle Says It's Getting Rid of GMOs. Here's the Problem.*, *Mother Jones* (Apr. 28, 2015, 4:08 PM), <http://www.motherjones.com/blue-marble/2015/04/chipotle-gmos-anti-science>.

1 media, its menus, on its store signage where its customers actually make their purchases, and in  
2 advertisements and on its billboards, both in stores and in print, which say “all” of the ingredients  
3 used in its food are “non-GMO”. Instead, to attempt to unravel Chipotle’s deception, a fast food  
4 consumer is purportedly required to log onto Chipotle’s website and search it through the use of  
5 various links for further information. Customers are not obligated to search ingredient lists or  
6 websites for additional information for products that are otherwise advertised, marketed, or labeled  
7 in a deceptive or misleading way.<sup>17</sup> And, even if they were, Chipotle’s website contains misleading  
8 and deceptive information, such as Chipotle’s own contradictory and inconsistent usage of the term  
9 “non-GMO.” For example, on its advertising it says “all” of its ingredients and “all our food” is  
10 “non-GMO” but on its website it only uses the term “Non-GMO” in connection with some  
11 ingredients and food like its “Corn Masa Flour,” “Corn Starch,” and “Baking Soda” but not with the  
12 vast majority of other ingredients such as its chicken, beef, sour cream, garlic, tomato, pork, black  
13 beans, etc. As a result, reasonable consumers attempting to discern Chipotle’s own marketing  
14 representations and in-store information with supposed clarifications on its website are only likely  
15 to be further confused and deceived by Chipotle’s conduct and its amorphous, misleading,  
16 inconsistent, self-interested definition of “Non-GMO.”

17 47. Of course, as a restaurateur, Chipotle is well aware its customers are unlikely to have  
18 seen its website anyway because its fast-food consumers never need to visit Chipotle’s website to  
19 buy food (as opposed to a purchase on Amazon.com for example), and are highly unlikely to seek  
20 out this information when simply deciding where to get lunch or dinner. Chipotle has purposefully  
21 chosen to only disclose further information about its Non-GMO Claims only on its website while  
22 concealing that information from its advertisements and in its stores in a way that amounts to conduct  
23  
24  
25

---

26 <sup>17</sup> On February 22, 2016, the Ninth Circuit Court of Appeals clarified and extended its holding in  
27 *Williams v. Gerber Prods. Co.*, 552 F. 3d 934 (9th Cir. 2008) in overturning the District Court’s  
28 decision in *Balser v. Hain Celestial Grp.*, No. 13-cv-05604-MR, 2013 WL 6673617 (C.D. Cal. Dec.  
18, 2013).

1 purposefully intended, or at a minimum reasonably likely to, deceive consumers. As explained  
2 above, a “Chipotle meal was, and remains, the very definition of a GMO meal...”<sup>18</sup>

3 **E. Chipotle Had A Duty To Disclose to Plaintiffs and Class Members**

4 48. Chipotle is and remains under a duty to Plaintiffs and Class Members to disclose the  
5 true facts, as alleged herein. The duty to disclose the true facts arises because, as marketer and seller,  
6 Chipotle is in a superior position to know the true character and quality of its food in relation to its  
7 Non-GMO Claims and the true facts are not something that Plaintiffs and putative class members  
8 could, without reasonable diligence, have discovered independently prior to purchase. As a result of  
9 Chipotle’s omissions about its Non-GMO Claims, conveyed directly through its announcements,  
10 statements, marketing and advertising campaigns, it has been able to charge consumers a significant  
11 price premium for its food over other fast-food restaurants by convincing consumers to pay for a  
12 purportedly superior product, as its advertising and marketing misleadingly convey.

13 49. Chipotle actively concealed and/or not disclosed material facts to Plaintiffs and the  
14 Classes about its Non-GMO claims as set forth herein that are material facts in that a reasonable  
15 person would have considered them important in deciding whether or not to purchase (or pay the  
16 same price for) Chipotle. Were Chipotle’s Non-GMO Claims not material to consumers, Chipotle  
17 would not focus its marketing and advertising to claim that it is the first non-GMO and GMO-free  
18 fast-food restaurant, and Chipotle would not be able to charge customers premium prices for its  
19 purportedly “non-GMO” menu. Chipotle’s deceptive and misleading Non-GMO claims, and its  
20 omissions regarding the true facts surrounding its Non-GMO Claims, have been, and continue to be,  
21 material to consumers, including Plaintiffs and other members of the putative classes, and Chipotle  
22 knows that its misleading and deceptive representations are material in nature.

23 50. Chipotle intentionally concealed and/or failed to disclose to consumers its Non-GMO  
24 Claims were deceptive and misleading as described in this Complaint for the purpose of inducing  
25 Plaintiffs and putative class members to act thereon. Plaintiffs and the putative class members

26 <sup>18</sup> Jon Entine, *Chipotle’s GMO Gimmick Turned Them Into The Public Face Of Science Illiteracy*,  
27 Science 2.0 (May 5, 2015, 7:30 AM),  
28 [http://www.science20.com/jon\\_entine/chipotles\\_gmo\\_gimmick\\_turned\\_them\\_into\\_the\\_public\\_fac\\_e\\_of\\_science\\_illiteracy-155328](http://www.science20.com/jon_entine/chipotles_gmo_gimmick_turned_them_into_the_public_fac_e_of_science_illiteracy-155328).

1 justifiably acted upon, or relied upon to their detriment, the concealed and/or non-disclosed material  
2 facts as evidenced by their purchases at Chipotle. Had Plaintiffs known of the true character and  
3 quality of the ingredients used in Chipotle's restaurants, they and the putative class members would  
4 not have purchased (or would have paid less for) such products. As a direct and proximate cause of  
5 Chipotle's misconduct, Plaintiffs and the putative class members have suffered actual damages,  
6 Chipotle has been unjustly enriched, and Plaintiffs and class members are entitled to appropriate  
7 relief. Chipotle's conduct has been and is malicious, wanton and/or reckless and/or shows a reckless  
8 indifference to the interests and rights of others.

9 **PLAINTIFFS' EXPERIENCES**

10 51. Plaintiff Colleen Gallagher is a resident of Piedmont, California. She made purchases  
11 for her and her children several times during the Class Period at Chipotle's 3271 Lakeshore Ave.  
12 location in Oakland, California. During the Class Period she purchased chicken and beef burritos  
13 which included cheese, sour cream, and other condiments. Prior to her purchases, Plaintiff Gallagher  
14 was aware of and was exposed to Chipotle's "Food With Integrity" campaign and believed that its  
15 food was a healthy non-GMO alternative to other fast food chains based on Chipotle's  
16 representations, which she understood to mean that Chipotle's menu did not contain GMOs and was  
17 not sourced from animals that were raised on GMO or genetically engineered feed. In particular,  
18 Plaintiff Gallagher was exposed to and relied on Chipotle's media campaign, the representation that  
19 Chipotle's menu was non-GMO and GMO free, having seen or heard advertisements, including store  
20 signage, that Chipotle used "only non-GMO ingredients," in deciding to continue her purchases at  
21 Chipotle. Plaintiff Gallagher would not have purchased Chipotle's menu items at the price she had  
22 paid, or purchased it at all, had she known that Chipotle's non-GMO and GMO free representations  
23 made were materially deceptive and misleading. However, Plaintiff Gallagher maintains an interest  
24 in continuing as a customer at Chipotle in the future.

25 52. Plaintiff Martin Schneider is a resident of Valley Village, California. He and his  
26 girlfriend Sandra Coller made regular Chipotle purchases during the Class Period at various  
27 locations, including most frequently at Chipotle's location at 5600 Van Nuys Blvd. in Van Nuys,  
28 California. During the Class Period he would usually purchase a chicken or beef burrito that included

1 cheese, sour cream, and other condiments, and sometimes would order a side of chips and  
2 guacamole. He also sometimes purchased Coca-Cola beverages. Prior to his purchases, Plaintiff  
3 Schneider was aware of and was exposed to Chipotle's "Food With Integrity" campaign and believed  
4 that its food was a healthy non-GMO alternative to other fast food chains based on Chipotle's  
5 representations, which he understood to mean that Chipotle's menu did not contain GMOs and was  
6 not sourced from animals that were raised on GMO feed. In particular, Plaintiff Schneider was  
7 exposed to and relied on Chipotle's media campaign, the representation that Chipotle's menu was  
8 non-GMO and GMO free, having seen or heard advertisements, including store signage, that  
9 Chipotle used "only non-GMO ingredients," in deciding to continue his purchases at  
10 Chipotle. Plaintiff Schneider would not have purchased Chipotle's menu items at the price he had  
11 paid, or purchased it at all, had he known that Chipotle's non-GMO and GMO free representations  
12 made were materially deceptive and misleading. Plaintiff Schneider stopped going to Chipotle after  
13 learning of its deceptive advertising and conduct but maintains an interest in continuing as a customer  
14 at Chipotle in the future if Chipotle eventually does have a non-GMO and GMO free menu.

15 53. Plaintiff Sarah Deigert is a resident of San Francisco, California. She made a few  
16 purchases during the Class Period, including at Chipotle's 211 Sutter Street location in San  
17 Francisco, California. One such purchase was made for herself on or about September 9, 2015, in  
18 the amount of \$10.77. During the Class Period she usually purchased a chicken burrito that included  
19 cheese, sour cream, and other condiments, but sometimes would get chicken or pork tacos with  
20 guacamole, cheese, and sour cream. On or about June 26, 2015, Plaintiff Deigert hosted a party for  
21 her co-workers and staff during which she made a purchase in the hundreds of dollars, some of which  
22 was reimbursed by her employer and the remainder she recalls paying cash for. For the party,  
23 Plaintiff Deigert ordered burritos that included chicken, pork, and beef, as well as cheese and sour  
24 cream and sides of corn chips and guacamole and salsa. Prior to her purchases, Plaintiff Deigert was  
25 aware of and was exposed to Chipotle's "Food With Integrity" campaign and believed that its food  
26 was a healthy non-GMO alternative to other fast food chains based on Chipotle's representations,  
27 which she understood to mean that Chipotle's menu did not contain GMOs and was not sourced from  
28 animals that were raised on GMO or genetically engineered feed. In particular, Plaintiff Deigert was

1 exposed to and relied on Chipotle’s media campaign, the representation that Chipotle’s menu was  
2 non-GMO and GMO free, having seen or heard advertisements, including store signage, that  
3 Chipotle used “only non-GMO ingredients,” in deciding to continue her purchases at Chipotle.  
4 Plaintiff Deigert would not have purchased Chipotle’s menu items at the price she had paid, or  
5 purchased it at all, had she known that Chipotle’s non-GMO and GMO free representations made  
6 were materially deceptive and misleading. Plaintiff Deigert also would not have served Chipotle at  
7 her staff party had she known Chipotle was making misleading and deceptive claims about its menu.  
8 Plaintiff Deigert also sometimes makes purchases at Taco Bell, but understood when making  
9 purchases at Chipotle that she was paying premium prices for non-GMO and GMO free food.  
10 Plaintiff Deigert maintains an interest in continuing as a customer at Chipotle in the future.

11 54. Plaintiff Laurie Reese is a resident of Whittier, California. She made purchases  
12 approximately twice a month during the Class Period at either Chipotle’s 15528 Whittier Blvd. or  
13 10121 Carmenita Road locations in Whittier, California. During the Class Period she regularly  
14 purchased chicken and beef burritos, tacos, and salad bowls that included cheese, sour cream, and  
15 other condiments. She also sometimes purchased a side of corn chips and guacamole and salsa. She  
16 sometimes paid cash and sometimes paid with a card. Prior to her purchases, Plaintiff Reese was  
17 aware of and was exposed to Chipotle’s “Food With Integrity” campaign and believed that its food  
18 was a healthy non-GMO alternative to other fast food chains based on Chipotle’s representations,  
19 which she understood to mean that Chipotle’s menu did not contain GMOs and was not sourced from  
20 animals that were raised on GMO or genetically engineered feed. In particular, Plaintiff Reese was  
21 exposed to and relied on Chipotle’s media campaign, the representation that Chipotle’s menu was  
22 non-GMO and GMO free, having seen or heard advertisements, including store signage, that  
23 Chipotle used “only non-GMO ingredients,” in deciding to continue her purchases at Chipotle.  
24 Plaintiff Reese would not have purchased Chipotle’s menu items at the price she had paid, or  
25 purchased it at all, had she known that Chipotle’s non-GMO and GMO free representations made  
26 were materially false and misleading. However, Plaintiff Reese maintains an interest in continuing  
27 as a customer at Chipotle in the future.

1           55. Plaintiff Theresa Gamage is a resident of Rockville, Maryland. She made regular  
2 purchases approximately once a week during the Class Period, including at Chipotle’s 865 Rockville  
3 Pike and 564 N. Frederick Avenue locations in Maryland. She always pays in cash. During the  
4 Class Period she usually purchased a burrito bowl with chicken or beef that included cheese, sour  
5 cream, and other condiments. She sometimes purchased a side of corn chips and guacamole. Prior  
6 to her purchases, Plaintiff Gamage was aware of and was exposed to Chipotle’s “Food With  
7 Integrity” campaign and believed that its food was a healthy non-GMO alternative to other fast food  
8 chains based on Chipotle’s representations, which she understood to mean that Chipotle’s menu did  
9 not contain GMOs and was not sourced from animals that were raised on GMO or genetically  
10 engineered feed. In particular, Plaintiff Gamage was exposed to and relied on Chipotle’s media  
11 campaign, the representation that Chipotle’s menu was non-GMO and GMO free, having seen or  
12 heard advertisements, including store signage, that Chipotle used “only non-GMO ingredients,” in  
13 deciding to continue her purchases at Chipotle. Plaintiff Gamage increased the frequency of her  
14 purchases from about once every two-three weeks to once a week after learning of Chipotle’s claims  
15 that its menu was now non-GMO and GMO free. Plaintiff Gamage would not have purchased  
16 Chipotle’s menu items at the price she had paid, or purchased it at all, had she known that Chipotle’s  
17 non-GMO and GMO free representations made were materially deceptive and misleading. Plaintiff  
18 Gamage maintains an interest in continuing as a customer at Chipotle in the future but believes its  
19 conduct is misleading to consumers such as herself.

20           56. Plaintiff Tiffanie Zangwill is a resident of Melbourne, Florida. She made regular  
21 purchases approximately once a week at Chipotle for her and her son during the Class Period,  
22 including at Chipotle’s 1563 W. New Haven Ave. location on Highway 192 in Melbourne, Florida.  
23 She usually, if not always, paid in cash. During the Class Period her and her son usually purchased  
24 chicken burritos with cheese and sour cream and other condiments. She sometimes purchased a side  
25 of corn chips and guacamole, and sometimes purchased soft drinks including Coca-Cola, Diet Coke  
26 and Sprite. Prior to her purchases, Plaintiff Zangwill was aware of and was exposed to Chipotle’s  
27 “Food With Integrity” campaign and believed that its food was a healthy non-GMO alternative to  
28 other fast food chains based on Chipotle’s representations, which she understood to mean that

1 Chipotle's menu did not contain GMOs and was not sourced from animals that were raised on GMO  
2 or genetically engineered feed. In particular, Plaintiff Zangwill was exposed to and relied on  
3 Chipotle's media campaign, the representation that Chipotle's menu was non-GMO and GMO free,  
4 having seen or heard articles, advertisements, including store signage, that Chipotle used "only non-  
5 GMO ingredients," in deciding to continue her purchases at Chipotle. Plaintiff Zangwill began  
6 frequenting Chipotle specifically after learning of Chipotle's claims that its menu was now non-  
7 GMO and GMO free. Prior to that she would go to a Tijuana Flats restaurant which served similar  
8 items but was not non-GMO or GMO free. Plaintiff Zangwill would not have purchased Chipotle's  
9 menu items at the price she had paid, or purchased it at all, had she known that Chipotle's non-GMO  
10 and GMO free representations made were materially deceptive and misleading. Plaintiff Zangwill  
11 has discontinued going to Chipotle since learning that its claims are deceptive and misleading  
12 because she feels duped, but she maintains an interest in continuing as a customer at Chipotle in the  
13 future should Chipotle actually have a GMO free or non-GMO menu.

14 57. Plaintiff Nadia Parikka is a resident of Ardsley, New York. During the Class Period,  
15 she made at least eight purchases at Chipotle for herself, her husband, and two daughters, at Chipotle  
16 restaurants located at: 250 Main Street, White Plains, New York and 5510 Xavier Drive, Yonkers,  
17 New York. During these visits, she paid by both cash or credit/debit card. During the Class Period,  
18 her and her family usually purchased burritos and bowls (chicken, steak and vegetables) along with  
19 cheese, sour cream and other condiments. She also purchased soft drinks including Coca-Cola, Diet  
20 Coke and Sprite. Prior to her purchases, Plaintiff Parikka was aware of and was exposed to  
21 Chipotle's "Food With Integrity" campaign and believed that its food was a healthy non-GMO  
22 alternative to other fast food chains based on Chipotle's representations, which she understood to  
23 mean that Chipotle's menu did not contain GMOs and was not sourced from animals that were raised  
24 on GMO or genetically engineered feed. In particular, Plaintiff Parikka was exposed to and relied  
25 on Chipotle's media campaign, the representation that Chipotle's menu was non-GMO and GMO  
26 free, having seen or heard articles, advertisements, including store signage, that Chipotle used "only  
27 non-GMO ingredients," in deciding to continue her purchases at Chipotle. Plaintiff Parikka began  
28 frequenting Chipotle specifically after learning of Chipotle's claims that its menu was now non-



1 GMO and GMO free. Plaintiff Parikka would not have purchased Chipotle’s menu items at the price  
2 she had paid, or purchased it at all, had she known that Chipotle’s non-GMO and GMO free  
3 representations made were materially deceptive and misleading. Plaintiff Parikka has discontinued  
4 going to Chipotle since learning that its claims are deceptive and misleading because she feels duped,  
5 but she maintains an interest in continuing as a customer at Chipotle in the future should Chipotle  
6 actually have a GMO free or non-GMO menu.

7 **CLASS ACTION ALLEGATIONS**

8 58. Plaintiffs Gallagher, Schneider, Deigert, and Reese (“California Plaintiffs”) bring a  
9 class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and  
10 all members of the following class (the “California Class”):

11 All persons residing in California, during the period April 27, 2015 to  
12 the present, who purchased and/or paid for Chipotle Food Products.

13 59. Plaintiff Gamage (“Maryland Plaintiff”) brings a class action pursuant to Rule 23 of  
14 the Federal Rules of Civil Procedure on behalf of herself and all members of the following class (the  
15 “Maryland Class”):

16 All persons residing in Maryland, during the period April 27, 2015 to  
17 the present, who purchased and/or paid for Chipotle Food Products.

18 60. Plaintiff Zangwill (“Florida Plaintiff”) brings a class action pursuant to Rule 23 of the  
19 Federal Rules of Civil Procedure on behalf of herself and all members of the following class (the  
20 “Florida Class”):

21 All persons residing in Florida, during the period April 27, 2015 to the  
22 present, who purchased and/or paid for Chipotle Food Products.

23 61. Plaintiff Parikka (“New York Plaintiff”) brings a class action pursuant to Rule 23 of  
24 the Federal Rules of Civil Procedure on behalf of herself and all members of the following class (the  
25 “New York”):

26 All persons residing in New York, during the period April 27, 2015 to  
27 the present, who purchased and/or paid for Chipotle Food Products.

1           62. Excluded from the California, Maryland, Florida and New York Classes (collectively  
2 “Class” or “Classes”) are: (1) any Judge or Magistrate presiding over this action and members of  
3 their families; (2) Chipotle, Chipotle’s subsidiaries, parents, successors, predecessors, and any entity  
4 in which Chipotle has a controlling interest, and its current or former employees, officers, and  
5 directors; (3) counsel for Plaintiffs and Chipotle; and (4) legal representatives, successors, or assigns  
6 of any such excluded persons.

7           63. The Classes meet all of the criteria required by Federal Civil Rule 23(a).

8           64. **Numerosity:** The Class members are so numerous that joinder of all members is  
9 impracticable. Though the exact number and identities of Class members are unknown at this time,  
10 Chipotle’s sales as of December 31, 2014 resulted in revenues of \$1.07 billion. Moreover, Defendant  
11 has over 1,780 restaurants, with approximately 325 restaurants in California, 68 in Maryland, 99 in  
12 Florida, and 103 in New York. Based on these figures, it appears that the membership of the Classes  
13 is in the tens of thousands. The identities of Class members are also ascertainable through records  
14 of store purchases and store patronage, social media accounts, publication notice, self-identification,  
15 and other means.

16           65. **Commonality:** Common questions of law and fact exist as to all Class members.  
17 These common questions of law or fact predominate over any questions affecting only individual  
18 members of the Classes. Common questions include, but are not limited to, the following:

- 19           (a) Whether Chipotle’s Non-GMO Claims violated California, Maryland, Florida,  
20 and New York consumer protection statutes;
- 21           (b) Whether Chipotle concealed or omitted material information from Plaintiffs  
22 and Class members concerning its Non-GMO Claims;
- 23           (c) Whether Chipotle’s Non-GMO Claims constitute intentional or negligent  
24 misrepresentations;
- 25           (d) Whether Chipotle was unjustly enriched by its unlawful conduct regarding its  
26 Non-GMO Claims;
- 27           (e) Whether Plaintiffs and Class Members have been injured by virtue of  
28 Chipotle’s unlawful conduct regarding its Non-GMO Claims;

- 1 (f) Whether Plaintiffs and Class Members are entitled to restitution or other relief  
2 from Chipotle, and if so, in what amounts;
- 3 (g) Whether Plaintiffs and Class members are entitled to monetary damages and,  
4 if so, what is the measure of those damages; and
- 5 (h) Whether Class members are entitled to injunctive and/or declaratory relief.

6 66. Common sources of evidence may also be used to demonstrate Chipotle's unlawful  
7 conduct on a class-wide basis, including, but not limited to documents and testimony about its public  
8 statements, advertising, marketing, and other media; Chipotle's records of the factual basis for its  
9 Non-GMO Claims; testing and other methods that can prove or disprove Chipotle's conduct  
10 regarding its Non-GMO Claims was unlawful; and records of sales and transactions.

11 67. **Typicality:** Plaintiffs' claims are typical of the claims of the respective Classes they  
12 seek to represent, in that the named Plaintiffs and all members of the proposed Classes have suffered  
13 similar injuries as a result of the same practices alleged herein. Plaintiffs have no interests adverse  
14 to the interests of the other members of the Classes.

15 68. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Classes,  
16 and have retained attorneys well experienced in class actions and complex litigation as their counsel,  
17 including cases alleging consumer protection claims arising from corporate conduct that is deceptive  
18 and misleading to consumers.

19 69. The Classes also satisfy the criteria for certification under Federal Civil Rule 23(b)  
20 and 23(c). Among other things, Plaintiffs aver that the prosecution of separate actions by the  
21 individual members of the proposed classes would create a risk of inconsistent or varying  
22 adjudication which would establish incompatible standards of conduct for Chipotle; that the  
23 prosecution of separate actions by individual class members would create a risk of adjudications with  
24 respect to them which would, as a practical matter, be dispositive of the interests of other class  
25 members not parties to the adjudications, or substantially impair or impede their ability to protect  
26 their interests; that Chipotle has acted or refused to act on grounds that apply generally to the  
27 proposed classes, thereby making final injunctive relief or declaratory relief described herein  
28 appropriate with respect to the proposed classes as a whole; that questions of law or fact common to

1 the Classes predominate over any questions affecting only individual members and that class action  
2 treatment is superior to other available methods for the fair and efficient adjudication of the  
3 controversy which is the subject of this action. Plaintiffs also aver that certification of one or more  
4 subclasses or issues may be appropriate for certification under Federal Civil Rule 23(c). Plaintiffs  
5 further state that the interests of judicial economy will be served by concentrating litigation  
6 concerning these claims in this Court, and that the management of the Classes will not be difficult.

7 70. Plaintiffs and other members of the Classes have suffered damages as a result of  
8 Chipotle's unlawful and wrongful conduct. Absent a class action, Chipotle will retain substantial  
9 funds received as a result of its wrongdoing, and such unlawful and improper conduct shall, in large  
10 measure, not go remedied. Absent a class action, the members of the Class will not be able to  
11 effectively litigate these claims and will suffer further losses, as Chipotle will be allowed to continue  
12 such conduct with impunity and retain the proceeds of its ill-gotten gains.

### 13 **CLAIMS FOR RELIEF**

#### 14 **COUNT I**

#### 15 **Violation of the California Consumer Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.***

#### 16 **On Behalf of the California Class**

17 71. California Plaintiffs reallege each and every allegation contained above, and  
18 incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein.  
19 California Plaintiffs bring this claim on behalf of the California Class.

20 72. The California Consumer Legal Remedies Act ("CLRA"), Civil Code section 1750,  
21 *et seq.*, was designed and enacted to protect consumers from unfair and deceptive business practices.  
22 To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil Code section  
23 1770.

24 73. The CLRA applies to Chipotle's actions and conduct described herein because it  
25 extends to the transactions involving the sale of goods or services for personal, family, or household  
26 use within the meaning of Civil Code section 1761.

27 74. At all relevant times, California Plaintiffs and members of the California Class were  
28 "consumers" as that term is defined in Civil Code section 1761(d).

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

- 3           ➤    In violation of section 1770(a)(5), Chipotle's Non-GMO Claims knowingly  
4                    misrepresented the character, ingredients, uses and benefits of its products and  
5                    menu;
- 6           ➤    In violation of section 1770(a)(7), Chipotle's Non-GMO Claims represented that  
7                    its products and menu are of a particular standard, quality or grade, which they  
8                    are not; and
- 9           ➤    In violation of section 1770(a)(9), Chipotle knowingly advertised its Non-GMO  
10                   Claims regarding its menu and products with the intent not to sell the products  
11                   as advertised.

12           76.    As set forth above, Chipotle's Non-GMO claims are deceptive and misleading to  
13 reasonable consumers in violation of the CLRA because: (1) Chipotle's Meat Products have been  
14 raised on GMO or genetically engineered feed and are not "non-GMO"; (2) Chipotle's Dairy  
15 Products are sourced from cows raised on GMO or genetically engineered feed and are not "non-  
16 GMO"; and (3) Chipotle's Soft Drinks contain GMOs and are not "non-GMO". Moreover, Chipotle  
17 intentionally does not disclose any of this information to consumers in its restaurants or on its menus.

18           77.    By way of the foregoing, Chipotle engaged in the knowing concealment, suppression,  
19 and omission of material facts with intent that others act upon such concealment, suppression, and  
20 omission, in connection with the sale and advertisement of its goods and services. Through  
21 Chipotle's uniform concealment and suppression of material facts, Chipotle engaged in misleading  
22 and deceptive conduct that created a likelihood of confusion or misunderstanding on the part of  
23 California Plaintiffs and Class members.

24           78.    Chipotle's conduct described here in was undertaken in transactions intended to result  
25 and which did result in the purchase of its products by consumers, which caused harm to California  
26 Plaintiffs and Class members who would not have purchased (or paid as much for) its Chipotle's  
27 products had they known the truth. California Plaintiffs were in fact injured by purchasing or  
28 overpaying for Chipotle's products.

1           79.     The CLRA is, by its express terms, a cumulative remedy, such that remedies under  
2 its provisions can be awarded in addition to those provided under separate statutory schemes and/or  
3 common law remedies, such as those alleged in the other Counts of this Amended Complaint. *See*  
4 California Civil Code § 1752.

5           80.     In accordance with Civil Code section 1780, California Plaintiffs and Class members  
6 seek injunctive and equitable relief for Chipotle’s violations of the CLRA necessary to bring them  
7 in compliance with the CLRA by, among other things, discontinuing the dissemination of its  
8 deceptive, and misleading Non-GMO Claims.<sup>19</sup>

9           81.     In accordance with Civil Code sections 1780, Plaintiff Gallagher seeks actual and  
10 punitive damages on behalf of herself and Class members. On August 28, 2015, Plaintiff Gallagher  
11 sent Chipotle a demand letter in writing via certified mail, return receipt requested, pursuant to Civil  
12 Code § 1782, notifying Chipotle of the particular violations of § 1770 of the CLRA alleged in her  
13 original Complaint and re-alleged herein. The return receipt for Plaintiff Gallagher’s CLRA demand  
14 indicates the letter was delivered on September 1, 2015. Because 30 days passed without any  
15 response from Chipotle after service, Plaintiff Gallagher is entitled to actual and punitive damages  
16 from Chipotle, on behalf of herself, the other California Plaintiffs and the Class, in addition to  
17 equitable relief sought herein.

18           82.     Additionally, the California Plaintiffs are serving a further notice pursuant to Civil  
19 Code § 1782 on Chipotle, via a certified letter, return receipt requested, enclosing a copy of this  
20 Amended Complaint and requesting appropriate relief. Should Chipotle fail to respond to California  
21 Plaintiffs demand and fully satisfy the requirements therein to bring their conduct into compliance  
22 with the law and provide California Plaintiffs and the Class the relief requested under the CLRA, the  
23 California Plaintiffs will seek leave to amend this Complaint to request actual and punitive damages  
24 for Chipotle’s conduct alleged in this Amended Complaint, if necessary.

25  
26  
27  
28  

---

<sup>19</sup> Per the Court’s February 5, 2016 Order Granting Defendant’s Motion to Dismiss (ECF No. 37), the Court found that a plaintiff lacks Article III standing to assert injunctive relief. Plaintiffs respectfully disagree and hereby re-assert claims for injunctive relief, including in order to maintain an appropriate record for appeal, if necessary.

1 83. California Plaintiffs also request attorneys' fees and costs provided in Civil Code  
2 section 1780, as well as any other relief the Court deems appropriate provided in Civil Code section  
3 1780 and the Prayer for Relief.

4 **COUNT II**

5 **Violation of California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.***

6 **On Behalf of the California Class**

7 84. California Plaintiffs reallege each and every allegation contained above, and  
8 incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein.  
9 California Plaintiffs bring this claim on behalf of the California Class.

10 85. Each of the above deceptive and misleading advertising practices of Chipotle set forth  
11 above constitutes untrue or misleading advertising under the California False Advertising Law  
12 (“FAL”), California Business & Professions Code section 17500, *et seq.*

13 86. At all material times, Chipotle’s statement, marketing, and advertising materials  
14 misrepresented or omitted to state material facts regarding Chipotle’s Non-GMO Claims as set forth  
15 herein this Amended Complaint. Chipotle is disseminating statements, marketing and advertising  
16 concerning its Non-GMO Claims that are unfair, untrue, deceptive, or misleading within the meaning  
17 of California Business & Professions Code section 17500, *et seq.* Chipotle’s acts and practices have  
18 deceived and/or are likely to continue to deceive California Plaintiffs, members of the Class, and the  
19 public. As set forth above, Chipotle’s Non-GMO claims are deceptive and misleading to reasonable  
20 consumers because: (1) Chipotle’s Meat Products have been raised on GMO or genetically  
21 engineered feed and are not “non-GMO”; (2) Chipotle’s Dairy Products are sourced from cows raised  
22 on GMO or genetically engineered feed and are not “non-GMO”; and (3) Chipotle Soft Drinks  
23 contain GMOs and are not “non-GMO”. Moreover, Chipotle intentionally does not disclose any of  
24 this information to consumers in its restaurants or on its menus.

25 87. In making and disseminating the statements alleged herein, Chipotle knew or should  
26 have known its advertisements were deceptive and misleading. California Plaintiffs and members  
27 of the Class based their decisions to purchase Chipotle’s products because of Chipotle’s  
28 misrepresentations and omissions of material facts.

1 88. California Plaintiffs and Class members are entitled to relief, including enjoining  
2 Chipotle to cease and desist from engaging in the practices described herein, as well as a declaration  
3 of rights that Chipotle's Non-GMO Claims are deceptive and misleading.

4 **COUNT III**

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

6 **On Behalf of the California Class**

7 89. California Plaintiffs reallege each and every allegation contained above, and  
8 incorporate by reference all other paragraphs of this Amended Complaint as if fully set forth herein.  
9 California Plaintiffs bring this claim on behalf of the California Class.

10 90. Chipotle has engaged in unfair competition within the meaning of California Business  
11 & Professions Code section 17200, *et seq.*, because Chipotle's conduct is unlawful, misleading and  
12 unfair as herein alleged.

13 91. California Plaintiffs, the members of the Class, and Chipotle are a "person" or  
14 "persons," within the meaning of Section 17201 of the UCL.

15 92. The UCL prohibits any unlawful, unfair, or fraudulent business practices or acts.  
16 Chipotle's conduct, as alleged herein, constitutes an unlawful, unfair and fraudulent business practice  
17 that occurred in connection with the marketing, advertisement and sale of its products. As set forth  
18 above, Chipotle's Non-GMO claims are deceptive, and misleading to reasonable consumers because:  
19 (1) Chipotle's Meat Products have been raised on GMO or genetically engineered feed and are not  
20 "non-GMO"; (2) Chipotle's Dairy Products are sourced from cows raised on GMO or genetically  
21 engineered feed and are not "non-GMO"; and (3) Chipotle's Soft Drinks contain GMOs and are not  
22 "non-GMO". Moreover, Chipotle intentionally does not disclose any of this information to  
23 consumers in its restaurants or on its menus.

24 93. Chipotle's misleading and deceptive misrepresentations and omissions, concealment  
25 and suppression of material fact, as described within, violated the UCL's unlawful, unfair, and  
26 fraudulent prongs.

27 94. **Unlawful prong:** Chipotle's conduct, as described within, violated the UCL's  
28 unlawful prong because it violates the CLRA in connection with the sale of goods and services, has



1 unlawfully and unjustly enriched Chipotle, and has constituted actionable intentional or negligent  
2 misrepresentation torts, at the expense of California Plaintiffs and the Class, who have spent money  
3 purchasing Chipotle's products (or paid more for them) they would not have otherwise purchased.

4 95. **Unfair prong:** Chipotle's conduct, as described within, violated the UCL's unfair  
5 prong because its conduct violates established public policy intended to regulate the fair and ethical  
6 sale of goods and services to consumers as set forth in the CLRA, and because it is immoral,  
7 unethical, oppressive, or unscrupulous and has caused injuries to the California Plaintiffs and the  
8 Class that outweigh any purported benefit. At all times relevant herein, Chipotle's conduct of  
9 misrepresenting and concealing material facts regarding Chipotle's Non-GMO Claims from the  
10 California Plaintiffs and consumers caused them injury by inducing them to purchase Chipotle's  
11 products (or paid more for them) they would not have otherwise purchased. The utility of Chipotle's  
12 conduct in misrepresenting and concealing material facts from the California Plaintiffs and the Class  
13 is far outweighed by the gravity of harm to consumers who have now spent money they would not  
14 have otherwise spent and that has resulted in Defendants being unjustly enriched.

15 96. **Fraudulent prong:** Chipotle's conduct, as described within, violated the UCL's  
16 fraudulent prong by misrepresenting and concealing material information that caused, or would  
17 likely cause, the California Plaintiffs and the Class to be deceived into purchasing Chipotle's  
18 products (or paid more for them) they would not have otherwise purchased. California Plaintiffs and  
19 the Class did, in fact, purchase Chipotle's products (or paid more for them) they would not have  
20 otherwise purchased but for Chipotle's fraudulent conduct misrepresenting and concealing material  
21 information about its Non-GMO Claims. California Plaintiffs and the Class have been harmed and  
22 sustained injury as a result of Chipotle's fraudulent conduct in violation of the UCL as explained  
23 herein.

24 97. California Plaintiffs have standing to pursue this claim because they have been injured  
25 by virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged  
26 herein. California Plaintiffs would not have purchased Chipotle's products (or paid as much for it)  
27 had they known the truth, though they have an interest in purchasing such products in the future. As  
28 a direct result of Chipotle's actions and omissions of material facts, California Plaintiffs and Class

1 members did not obtain the value of the products for which they paid; were unlawfully, unfairly, and  
2 fraudulently induced to make purchases that they otherwise would not have; and lost their ability to  
3 make informed and reasoned purchasing decisions.

4 98. The UCL is, by its express terms, a cumulative remedy, such that remedies under its  
5 provisions can be awarded in addition to those provided under separate statutory schemes and/or  
6 common law remedies, such as those alleged in the other Counts of this Amended Complaint. *See*  
7 Cal. Bus. & Prof. Code § 17205.

8 99. As a direct and proximate cause of Chipotle’s conduct, which constitutes unlawful,  
9 unfair, and fraudulent business practices, as herein alleged, California Plaintiffs and Class members  
10 have been damaged and suffered ascertainable losses measured by the cost of their Chipotle  
11 purchases or some portion thereof, thereby entitling them to recover restitution and equitable relief,  
12 including disgorgement or ill-gotten gains, refunds of moneys, interest, reasonable attorneys’ fees,  
13 filing fees, and the costs of prosecuting this class action, as well as any and all other relief that may  
14 be available at law or equity.

15 **COUNT IV**

16 **Violation of Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.***

17 **On Behalf of the Florida Class**

18 100. Plaintiff Zangwill realleges each and every allegation contained above, and  
19 incorporates by reference all other paragraphs of this Amended Complaint as if fully set forth herein.  
20 Plaintiff Zangwill brings this claim on behalf of the Florida Class.

21 101. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade  
22 Practices Act (“FDUTPA”). Fla. Stat. §§ 501.201, *et seq.* The express purpose of the FDUTPA is  
23 to “protect the consuming public . . . from those who engage in unfair methods of competition, or  
24 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla.  
25 Stat. § 501.202(2).

26 102. Chipotle’s sale of products at issue in this cause are a “consumer transaction” within  
27 the scope of the FDUTPA. Fla. Stat. §§ 501.201-501.213. Plaintiff Zangwill is a “consumer” as  
28

1 defined by the FDUTPA. Fla. Stat. § 501.203. Chipotle’s products are “goods” within the meaning  
2 of the FDUTPA. Chipotle is engaged in trade or commerce within the meaning of the FDUTPA.

3 103. The FDUTPA declares as unlawful “unfair methods of competition, unconscionable  
4 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”  
5 Fla. Stat. § 501.204(1).

6 104. The FDUPA provides that “due consideration be given to the interpretations of the  
7 Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade  
8 Commission Act.” Fla. Stat. § 501.204(2). Chipotle’s unfair and deceptive practices are likely to  
9 mislead -- and have misled -- the consumer acting reasonably under the circumstances. Fla. Stat. §  
10 500.04; 21 U.S.C. § 343. As set forth above, Chipotle’s Non-GMO claims are deceptive and  
11 misleading to reasonable consumers because: (1) Chipotle’s Meat Products have been raised on  
12 GMO or genetically engineered feed and are not “non-GMO”; (2) Chipotle’s Dairy Products are  
13 sourced from cows raised on GMO or genetically engineered feed and are not “non-GMO”; and (3)  
14 Chipotle’s Soft Drinks contain GMOs and are not “non-GMO”. Moreover, Chipotle intentionally  
15 does not disclose any of this information to consumers in its restaurants or on its menus.

16 105. Chipotle has violated the FDUPA by engaging in the unfair and deceptive practices  
17 described above, which offend public policies and are immoral, unethical, unscrupulous and  
18 substantially injurious to consumers.

19 106. Plaintiff Zangwill has standing to pursue this claim because she has been injured by  
20 virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged herein.  
21 Plaintiff Zangwill would not have purchased Chipotle’s products (or paid as much for it) had she  
22 known the truth, though she has an interest in purchasing such products in the future. As a direct  
23 result of Chipotle’s actions and omissions of material facts, Plaintiff Zangwill and Class members  
24 did not obtain the value of the products for which they paid; were induced to make purchases that  
25 they otherwise would not have; and lost their ability to make informed and reasoned purchasing  
26 decisions.

27 107. The damages suffered by Plaintiff Zangwill and the Florida Class were directly and  
28 proximately caused by the deceptive, misleading and unfair practices of Chipotle, as described above.

1 108. Plaintiff Zangwill and the Florida Class seek a declaratory judgment that Chipotle’s  
2 Non-GMO Claims are deceptive and misleading in violation of the FDUTPA and court order  
3 enjoining the above described wrongful acts and practices of the Chipotle. Fla. Stat. § 501.211(1).

4 109. Additionally, Plaintiff Zangwill and the Florida Class make claims for actual  
5 damages, attorney's fees and costs. Fla. Stat. §§ 501.2105, 501.211(2).

6  
7 **COUNT V**

8 **Violation of Maryland Consumer Protection Act, MD. Code Ann. §§ 13-101, *et seq.***  
9 **On Behalf of the Maryland Class**

10 110. Plaintiff Gamage realleges each and every allegation contained above, and  
11 incorporates by reference all other paragraphs of this Amended Complaint as if fully set forth herein.  
12 Plaintiff Gamage brings this claim on behalf of the Maryland Class.

13 111. This cause of action is brought pursuant to the Maryland Consumer Protection Act  
14 (“MCPA”). MD Code Ann. §§ 13-101, *et seq.* The express purpose of the MCPA is to “set certain  
15 minimum statewide standards for the protection of consumers across the State” because “consumer  
16 protection is one of the major issues which confront all levels of government, and that there has been  
17 mounting concern over the increase of deceptive practices in connection with sales of merchandise,  
18 real property, and services and the extension of credit. MD Code Ann. §§ 13-102.

19 112. Plaintiff Gamage is a “consumer” as defined by the MCPA. MD Code Ann. §§ 13-  
20 101(c)(1). Chipotle’s products are “consumer goods,” “consumer services,” and “merchandise”  
21 within the meaning of the MCPA. MD Code Ann. §§ 13-101(d)(1)-(2),(f). Chipotle is a “merchant”  
22 engaged in sales, advertising, and commerce within the meaning of the MCPA. MD Code Ann.  
23 §§ 13-101.

24 113. The MCPA declares as unlawful “unfair or deceptive trade practices.” MD Code  
25 Ann. §§ 13-102. Chipotle’s unfair or deceptive trade practice in violation of the MCPA includes  
26 making “[f]alse, falsely disparaging, or misleading oral or written statement, visual description, or  
27 other representation of any kind which has the capacity, tendency, or effect of deceiving or  
28 misleading consumers”; representing that its “goods and services have a sponsorship, approval,

1 accessory, characteristic, ingredient, use, benefit, or quantity which they do not have”; that it has “a  
2 sponsorship, approval, status, affiliation, or connection which he does not have”; advertising  
3 consumer goods without the intent to sell them as advertised; and engaging in “[d]eception, fraud,  
4 false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission  
5 of any material fact with the intent that a consumer rely on the same in connection” with the  
6 promotion or sale of its consumer goods and services. MD Code Ann. §§ 13-103.

7 114. As set forth above, Chipotle’s Non-GMO claims are deceptive, and misleading to  
8 reasonable consumers because: (1) Chipotle’s Meat Products have been raised on GMO or  
9 genetically engineered feed and are not “non-GMO”; (2) Chipotle’s Dairy Products are sourced from  
10 cows raised on GMO or genetically engineered feed and are not “non-GMO”; and (3) Chipotle’s  
11 Chipotle’s Soft Drinks contain GMOs and are not “non-GMO”. Moreover, Chipotle intentionally  
12 does not disclose any of this information to consumers in its restaurants or on its menus.

13 115. Chipotle has violated the MCPA by engaging in the unfair and deceptive trade  
14 practices described above, which offend Maryland’s public policies and are immoral, unethical,  
15 unscrupulous and substantially injurious to consumers.

16 116. Plaintiff Gamage has standing to pursue this claim because she has been injured by  
17 virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged herein.  
18 Plaintiff Gamage would not have purchased Chipotle’s products (or paid as much for it) had she  
19 known the truth. As a direct result of Chipotle’s actions and omissions of material facts, Plaintiff  
20 Gamage and Class members did not obtain the value of the products for which they paid; were  
21 induced to make purchases that they otherwise would not have; and lost their ability to make  
22 informed and reasoned purchasing decisions.

23 117. The damages suffered by Plaintiff Gamage and the Maryland Class were directly and  
24 proximately caused by the deceptive, misleading and unfair practices of Chipotle, as described above.

25 118. Plaintiff Gamage and the Maryland Class seek a declaratory judgment that Chipotle’s  
26 Non-GMO Claims are deceptive and misleading in violation of the FDUTPA and court order  
27 enjoining the above described wrongful acts and practices of Chipotle.  
28



1 Parikka and Class members did not obtain the value of the products for which they paid; were induced  
2 to make purchases that they otherwise would not have; and lost their ability to make informed and  
3 reasoned purchasing decisions.

4 126. The damages suffered by Plaintiff Parikka and the New York Class were directly and  
5 proximately caused by the deceptive, misleading and unfair practices of Chipotle, as described above.

6 127. Plaintiff Parikka and the New York Class seek a declaratory judgment that Chipotle's  
7 Non-GMO Claims are deceptive and misleading in violation of Section 349 and court order enjoining  
8 the above described wrongful acts and practices of Chipotle.

9 128. Additionally, Plaintiff Gamage and the New York Class make claims for  
10 compensatory, actual damages or \$50 per claim (whichever is greater), treble and/or punitive  
11 damages up to \$1,000 for each claim for Chipotle's knowing and willful violation of Section 349,  
12 restitution, disgorgement, refunds, attorneys' fees and costs, as well as any other relief available at  
13 law or equity.

#### 14 **COUNT VII**

#### 15 **Violation of New York's False Advertising Law, N.Y. Gen. Bus. Law § 350, *et seq.***

#### 16 **On Behalf of the New York Class**

17 129. Plaintiff Parikka realleges each and every allegation contained above, and  
18 incorporates by reference all other paragraphs of this Amended Complaint as if fully set forth herein.  
19 Plaintiff Parikka brings this claim on behalf of the New York Class.

20 130. Under New York's General Business Law, Section 350, "[f]alse advertising in the  
21 conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby  
22 declared unlawful." Each of the above deceptive, and misleading advertising practices of Chipotle  
23 set forth above constitutes untrue or misleading advertising under Section 350. Plaintiff, the New  
24 York Class members, and Chipotle are "persons" within the meaning of Section 350. Chipotle's  
25 products are goods and services offered for sale to the public and thus, constitute conduct involving  
26 the "business, trade, and commerce" within the meaning of Section 350.

27 131. At all material times, Chipotle's statement, marketing, and advertising materials  
28 misrepresented or omitted to state material facts regarding Chipotle's Non-GMO Claims as set forth

1 herein this Amended Complaint. Chipotle is disseminating statements, marketing and advertising  
2 concerning its Non-GMO Claims that are unfair, untrue, deceptive, or misleading within the meaning  
3 of Section 350. Chipotle's acts and practices have deceived and/or are likely to continue to deceive  
4 Plaintiff Parikka, members of the Class, and the public. As set forth above, Chipotle's Non-GMO  
5 claims are deceptive, and misleading to reasonable consumers because: (1) Chipotle's Meat Products  
6 have been raised on GMO or genetically engineered feed and are not "non-GMO"; (2) Chipotle's  
7 Dairy Products are sourced from cows raised on GMO or genetically engineered feed and are not  
8 "non-GMO"; and (3) Chipotle's Soft Drinks contain GMOs and are not "non-GMO". Moreover,  
9 Chipotle intentionally does not disclose any of this information to consumers in its restaurants or on  
10 its menus.

11 132. In making and disseminating the statements alleged herein, Chipotle knew or should  
12 have known its advertisements were untrue, deceptive and misleading. Plaintiff Parikka and  
13 members of the New York Class based their decisions to purchase Chipotle's products because of  
14 Chipotle's misrepresentations and omissions of material facts.

15 133. Plaintiff Parikka and New York Class members are entitled to relief, including  
16 enjoining Chipotle to cease and desist from engaging in the practices described herein, as well as a  
17 declaration of rights that Chipotle's Non-GMO Claims are deceptive and misleading.

### 18 **COUNT VIII**

#### 19 **Unjust Enrichment**

#### 20 **On Behalf of All Classes**

21 134. Plaintiffs reallege each and every allegation contained above, and incorporate by  
22 reference all other paragraphs of this Amended Complaint as if fully set forth herein. Plaintiffs bring  
23 this claim on behalf of all Classes.

24 135. Chipotle engaged in deceptive and misleading conduct regarding its Non-GMO  
25 Claims as set forth above.

26 136. As a result of Chipotle's conduct alleged herein, Plaintiffs conferred a benefit on  
27 Chipotle by patronizing its establishments and spending money purchasing Chipotle's products.  
28





1 induce reliance by Plaintiffs and Class members and influence their decisions to purchase Chipotle's  
2 products. At a minimum, Chipotle negligently misrepresented and omitted material facts regarding  
3 its Non-GMO Claims.

4 144. Plaintiffs and the Class members justifiably reasonably relied on Chipotle's  
5 representations and omissions as set forth herein, and, in reliance thereon, purchased Chipotle's  
6 products they would not have otherwise purchased or paid the same amount for. Had Plaintiffs  
7 known all material facts regarding Chipotle's Non-GMO Claims they would have acted differently,  
8 and would not have been damaged by Chipotle's conduct.

9 145. As a direct and proximate result of Chipotle's misrepresentations and omissions,  
10 Plaintiffs and Class members were induced to purchase and consume Chipotle's products, and have  
11 suffered damages to be determined at trial in that, among other things, they have been deprived of  
12 the benefit of their bargain in that they bought products that were not what they were represented to  
13 be, and they have spent money on products that had less value than was reflected in the premium  
14 purchase price they paid.

15 **COUNT X**

16 **Declaratory Relief, 28 U.S.C. § 2201**

17 **On Behalf of All Classes**

18 146. Plaintiffs reallege each and every allegation contained above, and incorporate by  
19 reference all other paragraphs of this Amended Complaint as if fully set forth herein. Plaintiffs bring  
20 this claim on behalf of all Classes.

21 147. An actual controversy has arisen and now exists between Plaintiffs and the putative  
22 Classes on the one hand, and Chipotle on the other, concerning the misleading and deceptive nature  
23 of Chipotle's Non-GMO Claims. Plaintiffs and the Class members contend that Chipotle's Non-  
24 GMO Claims are deceptive and misleading because (1) Chipotle's Meat Products have been raised  
25 on GMO or genetically engineered feed and are not "non-GMO"; (2) Chipotle's Dairy Products are  
26 sourced from cows raised on GMO or genetically engineered feed and are not "non-GMO"; and (3)  
27 Chipotle's Soft Drinks contain GMOs and are not "non-GMO". Plaintiffs contend Chipotle's Non-  
28 GMO Claims are inconsistent with reasonable consumers' understanding of such representations.

1 On the other hand, Chipotle contends that it can promulgate deceptive, confusing, misleading,  
2 inconsistent, and amorphous Non-GMO Claims to suit its market and profit driven objectives.  
3 Chipotle contends its use of Non-GMO Claims is not deceptive, and misleading to reasonable  
4 consumers.

5 148. Accordingly, Plaintiffs are entitled to and seek a judicial determination of whether  
6 Chipotle's Non-GMO Claims are deceptive and misleading to reasonable consumers.

7 149. A judicial determination of the rights and responsibilities of the parties over  
8 Chipotle's Non-GMO Claims is necessary and appropriate at this time so (1) that the rights of the  
9 Plaintiffs and the Classes may be determined with certainty for purposes of resolving this action; and  
10 (2) and so that the Parties and the marketplace will have a consistent understanding of what Non-  
11 GMO Claims mean in the absence of applicable regulations.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class, pray for relief  
14 as follows:

- 15 A. For an Order certifying this case as a class action pursuant to Federal Civil Rule 23  
16 against Chipotle, appointing Plaintiffs as Class Representatives of their respective  
17 Classes, and Kaplan Fox & Kilsheimer LLP as Class Counsel;
- 18 B. Awarding monetary, punitive and actual damages and/or restitution, as appropriate;
- 19 C. Awarding declaratory and injunctive relief as permitted by law or equity to assure  
20 that the Class have an effective remedy, including enjoining Chipotle from continuing  
21 the unlawful practices as set forth above;
- 22 D. Prejudgment interest to the extent allowed by the law;
- 23 E. Awarding all costs, experts' fees and attorneys' fees, expenses and costs of  
24 prosecuting this action; and
- 25 F. Such other and further relief as the Court may deem just and proper.

26 ///

27 ///

28 ///

**JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

DATED: March 11, 2016

**KAPLAN FOX & KILSHEIMER LLP**

By: /s/ Laurence D. King  
Laurence D. King

Linda M. Fong  
Matthew George  
Mario M. Choi  
350 Sansome Street, Suite 400  
San Francisco, CA 94104  
Telephone: (415) 772-4700  
Facsimile: (415) 772-4707

**KAPLAN FOX & KILSHEIMER LLP**

Frederic S. Fox (*pro hac vice*)  
Donald R. Hall (*pro hac vice*)  
850 Third Avenue, 14<sup>th</sup> Floor  
New York, NY 10022  
Telephone: (212) 687-1980  
Facsimile: (212) 687-7714

*Attorneys for Plaintiffs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28